(29,827)

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1923**

# No. 517

E. I. DUPONT DE NEMOURS & COMPANY, PETITIONER,

*vs.*

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AGENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 30, 1924

PLEAS AND PROCEEDINGS IN THE

# UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

AT THE DECEMBER TERM, 1922, OF SAID COURT, BEFORE THE HONORABLE KIMBROUGH STONE, CIRCUIT JUDGE, AND THE HONORABLE TILLMAN D. JOHNSON, DISTRICT JUDGE

Attest: E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal of the United States Circuit Court of Appeals, Eighth Circuit.)

Be it Remembered that heretofore, to-wit: on the fifteenth day of July, A. D. 1922, a transcript of record pursuant to a writ of error allowed by the District Court of the United States for the Eastern District of Arkansas, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein James C. Davis, Director General of Railroads, Agent, was Plaintiff in Error, and E. I. Dupont De Nemours and Company, was Defendant in Error, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

(Writ of Error and Clerk's Return.)

United States of America—ss.

The President of the United States, To the Honorable the Judges of the District Court of the United States for the Western Division of the Eastern District of Arkansas—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the October Term, 1921, thereof, between James C. Davis, Director General of Railroads, as Agent, plaintiff, and E. I. Dupont De Nemours & Company, defendant, a manifest error hath happened, to the great damage of the said James C. Davis, Director General of Railroads, as Agent, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid, at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, on or before the 19th day of July, 1922, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 20th day of May,

in the year of our Lord one thousand nine hundred and twenty-two.

Seal
U. S. Dist. Court,
West. Div. U. S. A.
East. Dist. of Ark.

Issued at office in the City of Little Rock, with the seal of the District Court of the United States for the Western Division of the Eastern District of Arkansas, dated as aforesaid.

SID. B. REDDING,
Clerk of the District Court of the United States for the Western Division of the Eastern District of Arkansas.

Allowed by:
Jacob Trieber, Judge.

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Return to Writ.

United States of America,
Western Division of the
Eastern District of Arkansas—ss.

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

Seal
U. S. Dist. Court,
West. Div. U. S. A.
East. Dist. of Ark.

In Witness Whereof, I hereto subscribe my name, and affix the seal of said District Court, at office in the City of Little Rock, this 10th day of June, A. D. 1922.

SID. B. REDDING,
Clerk of said Court.

Endorsed: Filed in the District Court on May 22, 1922.

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2 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

Be it remembered that on the 23rd day of September, A. D. 1921, came into the office of the Clerk of the District Court of the United States for the Western Division of the Eastern District of Arkansas, James C. Davis, Director General of Railroads, as Agent, by Buzbee, Pugh and Harrison, his at-

torneys, and files therein on the law side of said court his complaint against E. I. DuPont DeNemours & Company, which complaint is in words and figures as follows, to-wit:

Complaint at Law.

3 In the District Court of the United States for the Eastern District of Arkansas, Western Division.

James C. Davis, Director General of Railroads, as Agent, Plaintiff,

vs.

E. I. Dupont De Nemours & Company, Defendant.

Comes the plaintiff, James C. Davis, Director General of Railroads, as Agent, and for his cause of action against the defendant, E. I. Dupont De Nemours & Company, states:

That he is a citizen and resident of the State of New York, and that he has been duly appointed and commissioned by the President of the United States of America, under and by virtue of an Act of Congress, known as the Transportation Act of 1920, Director General of Railroads, as Agent for the purpose of winding up the affairs of the United States Railroad Administration, and for such purpose, maintains an office in the City of Washington, District of Columbia.

That the E. I. Dupont De Nemours & Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and for jurisdictional purposes is a citizen and resident of said State. That the defendant is authorized to do business in the State of Arkansas, and maintains an agency therein.

That during the months of May, June and July, 1918, the defendant caused a number of cars loaded with cotton linters to be shipped to Little Rock, Arkansas, over the line of railroad of The Chicago, Rock Island and Pacific Railway Company, for delivery to the Little Rock Compress Company, some of said shipments being consigned direct to said Compress Company and others consigned to the defendant
4 in case of the Compress Company. That all of said shipments originated at points in the States of Oklahoma and Texas.

That under the tariffs in effect at that time, demurrage in the sum of Three Thousand Two Hundred Seventy Eight Dollars ($3278.00) accrued at Little Rock, Arkansas, on said shipments. A statement showing the points of destination, the car numbers and initials, date of placement and date of re-

lease, of each car and the amount of demurrage accruing on each car is hereto attached as exhibit "A" and made a part hereof.

That said demurrage charges are justly due plaintiff from defendant and that demand has been made therefor but payment thereof refused by the defendant.

Wherefore, premises considered, plaintiff prays for judgment against the defendant E. I. Dupont De Nemours & Company in the sum of Three Thousand Two Hundred Seventy Eight Dollars plus three per cent war tax, interest thereon and for all costs herein laid out and expended.

(Signed) GEO. B. PUGH,
Attorney for James C. Davis, Director General of Railroads, as Agent.

## Exhibit A to Bill of Complaint.

(Statement of cars containing cotton linters shipped by defendant during the months of May, June and July, 1918, and demurrage charges thereon.)

5

| From | Date Billed | Road Orig. | No. Bales | Consignee | | Car Number | Car Initial | Date of Transfer | Constructive Placed | Actually Placed | Date Released | Chgd. | Should Chg. | Chgd. Error | O. K. Collect. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Durant, Okla. | 6/3 | M. K. T. | 66 | DuPont | DeM | 5800 | CO | 6/8 | | 6 7 15 | 6 11 6 | 3.00 | 3.00 | | 3.00 |
| " | " | " | 74 | " | " | 11283 | AA | " | | . . . | . . . | | | | |
| " | " | " | 76 | " | " | 16204 | GN | " | | . . . | . 12 . | 3.00 | 3.00 | | 3.00 |
| " | " | " | 66 | " | " | 27258 | AT | " | | . . . | . 11 . | | | | |
| " | 5 | " | 79 | " | " | 38765 | HEW | 6/10 | | . 9 . | . 13 . | | 3.00 | | 3.00 |
| " | " | " | 65 | " | " | 32600 | THB | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 79 | " | " | 35592 | SP | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | 6/6 | " | 75 | " | " | 133544 | CBQ | " | | . 10 . | . 15 . | 9.00 | 9.00 | | 9.00 |
| " | " | " | 68 | " | " | 68140 | BM | " | | . . . | . . . | 9.00 | 9.00 | | 9.00 |
| " | " | " | 69 | " | " | 312297 | G. T. P. | " | | . . . | . 13 . | | 3.00 | | 3.00 |
| " | 5 | " | 72 | " | " | 44413 | BO | 6/12 | | . 12 . | . 15 . | 3.00 | 3.00 | | 3.00 |
| " | " | " | 65 | " | " | 3831 | KCMO | " | | . . . | . . . | 3.00 | 3.00 | | 3.00 |
| " | " | " | 69 | " | " | 3320 | CCC | " | | . . . | . 19 . | 12.00 | 12.00 | | 12.00 |
| " | 6 | " | 66 | " | " | 13653 | GT | " | | . . . | . 18 . | 9.00 | 9.00 | | 9.00 |
| " | 7 | " | 65 | " | " | 67882 | JC | " | | . . . | . 15 . | 3.00 | 3.00 | | 3.00 |
| " | " | " | 66 | " | " | 41756 | ACH | " | | . . . | . . . | 3.00 | 3.00 | | 3.00 |
| " | " | " | 66 | " | " | 2145 | CJH | " | | . . . | . . . | 3.00 | 3.00 | | 3.00 |
| " | 5 | " | 69 | " | " | 26271 | NC | 6/13 | | . . . | . 18 . | 6.00 | 6.00 | | 6.00 |

6

| From | Date Billed | Road Orig. | No. Bales | Consignee | | Car Number | Car Initial | Date of Transfer | Constructive Placed | Actually Placed | Date Released | Chgd. | Should Chg. | Chgd. Error | O. K. Collect. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Durant, Okla. | 5 | M. K .T. | 73 | DuPont | DeM | 126629 | SF | 6/13 | | " " " | . . . | 6.00 | 6.00 | | 6.00 |
| " | " | " | 69 | " | " | 57959 | RI | " | | . 13 . | . 19 . | 9.00 | 9.00 | | 9.00 |
| " | " | " | 89 | " | " | 64057 | K | " | | . . . | . . . | 9.00 | 9.00 | | 9.00 |
| " | 8 | " | 65 | " | " | 15647 | LP | 6/15 | 6177a | . 17 . | . 18 . | | | | |
| " | " | " | 75 | " | " | 102254 | CBQ | " | ..... | . . . | . . . | | | | |
| " | " | " | 74 | " | " | 15798 | UP | " | ..... | . . . | . . . | | | | |
| " | 10 | " | 65 | " | " | 132352 | CBQ | 6/18 | .19.. | . 26 . | . 27 . | 24.00 | 24.00 | | 24.00 |
| " | " | " | 66 | " | " | 45251 | RI | " | ..... | . . . | . . . | 24.00 | 24.00 | | 24.00 |
| " | " | " | 67 | " | " | 17382 | OSH | " | ..... | . . . | . . . | 24.00 | 24.00 | | 24.00 |
| | | | | | | | | | | | As charged and reported | 159.00 | | | 171.00 |
| | | | | | | | | | | | Should charge | | 171.00 | | |
| | | | | | | | | | | | Total to collect | 171.00 | | | |
| | | | | | | | | | | | War Tax | 5.13 | | | |
| | | | | | | | | | | | | 176.13 | | | |

The above care of C/S Linters was compressed in transit, before reaching rails of Rock Island and consigned to Little Rock Compress for storage.

| From | Billing | Orig. | Bales | Consignee | Car Number | Car Initial | Date of Transfer | Constructive Placed | Actually Placed | Date Released | Chgd. | Should Chg. | Chgd. in Error | O. K. Collect. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Hillsboro Texas | 6/18 | M. K. T. | 73 | DePont DeM | 16036 | CA | 6/24 | 6 25 7a | 6 27 15 | 7 2 6p | 18.00 | 18.00 | | 18.00 |
| " | " | " | 73 | " " | 44867 | B 4 | " | " " " | " " " | . . . | 18.00 | 18.00 | | 18.00 |
| " | " | " | 75 | " " | 67871 | BM | " | " " " | " " " | . . . | 18.00 | 18.00 | | 18.00 |
| " | " | " | 80 | " " | 142293 | IC | " | " " " | " " " | . . . | 18.00 | 18.00 | | 18.00 |
| " | " | " | 85 | " " | 172401 | " | " | " " " | " " " | . . . | | 18.00 | | 18.00 |
| " | " | " | 65 | " " | 747 | RIP | " | " " " | " " " | . . . | 18.00 | 18.00 | | 18.00 |
| " | " | " | 70 | " " | 27564 | MC | " | " " " | " " " | . . . | 18.00 | 18.00 | | 18.00 |
| " | " | " | 65 | " " | 100960 | CNW | " | " " " | " " " | . 3 . | 24.00 | 24.00 | | 24.00 |
| " | " | " | 65 | " " | 32318 | LW | " | " " " | " " " | . . . | | 24.00 | | 24.00 |
| " | " | " | 65 | " " | 11557 | OSL | " | " " " | " " " | . . . | 24.00 | 24.00 | | 24.00 |
| " | 6/19 | " | 72 | " " | 72709 | UP | 6/28 | " " " | " " " | | 6.00 | 6.00 | | 6.00 |
| " | " | " | 78 | " " | 43360 | Q | " | " " " | " " " | . . . | 6.00 | 6.00 | | 6.00 |
| " | " | " | 65 | " " | 17930 | Pa | 7/1 | 7 2 7a | 7 2 " | . 6 . | 6.00 | 6.00 | | 6.00 |
| " | " | " | 74 | " " | 28734 | NP | " | | " " " | . 2 . | | | | |

The above cars c/s Linters were compressed in transit before reaching Rock Island rails and consigned to Little Rock for storage.

| | | | |
|---|---|---|---|
| As chg. & reported | 174.00 | | |
| Should charge | | 216.00 | 216.00 |
| Balance to charge | 42.00 | | |
| To collect | 216.00 | | 216.00 |

8

| From | Date Billing | Road Orig. | No. Bales | Consignee | Car Number | Car Initial | Date of Transfer | Constr. Placed | Actually Placed | Date Released | As Chgd. | Should Chg. | Chgd. in Error | O. K. Collect. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Stroud Okla. | 6/13 | St. L. S. F. | 85 | Dupont DeM | 22506 | GN | 6/18 | 6 19 7a | 6 26 D | 6 27 6 | | 24.00 | | 24.00 |
| " | " | " | 75 | " " | 25430 | GT | " | | 6 17 " | 6 18 " | | | | |
| " | " | " | 78 | " " | 71975 | NH | " | 6 19 7a | 6 26 " | " 27 " | | 24.00 | | 24.00 |
| " | " | " | 75 | " " | 4699 | QMS | " | " " " | " " " | " " " | | 24.00 | | 24.00 |
| " | " | " | 77 | " " | 13671 | TP | " | . . . | " " " | " " " | | 24.00 | | 24.00 |
| " | " | " | 86 | " " | 103106 | Q | " | . . . | " " " | " " " | | 24.00 | | 24.00 |
| " | " | " | 54 | " " | 20126 | SAT | 2/5 | 7 6 . | 7 13 " | 7 14 " | | 18.00 | | 18.00 |
| New Brann-fels, Tex. | | | | | | | | | | | | | | |
| | 6/28 | M. K. T. | 99 | Dupont DeM | 93380 | MC | 7/5 | 7 6 7a | 7 4 D | 7 13 6 | 18.00 | 18.00 | | 18.00 |
| " | " | " | 78 | " " | 6314 | AA | " | " " " | . . . | . . . | 18.00 | 18.00 | | 18.00 |
| " | " | " | 93 | " " | 137390 | UP | " | " " " | . . . | . . . | | 6.00 | | 6.00 |
| " | " | " | 85 | " " | 123480 | CNW | " | " " " | . . . | . 10 . | 6.00 | 6.00 | | 6.00 |
| " | " | " | 80 | " " | 85805 | NH | " | " " " | . . . | . . . | 6.00 | 6.00 | | 6.00 |
| " | " | " | 95 | " " | 135437 | CEI | " | " " " | . . . | . . . | 6.00 | 6.00 | | 6.00 |
| " | " | " | 95 | " " | 11161 | HSC | " | " " " | . . . | . 5 . | | | | |
| " | " | " | 107 | " " | 65725 | MKT | " | " " " | . 9 . | . 13 . | 18.00 | 18.00 | | 18.00 |
| " | " | " | 80 | " " | 46701 | CHW | 7/6 | " " " | . . . | . . . | 18.00 | 18.00 | | 18.00 |

| From | Date Billed | Road Orig. | No. Bales | Consignee | Car Number | Car Initial | Date of Transfer | Construc. Placed | Actually Placed | Date Released | As Chgd | Should Chg. | Chgd. Error | O. K. Collect |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| New Brann-fels, Tex. | 6/28 | M. K. T. | 80 | Dupont DeM | 20654 | CNW | 7/6 | " 8 " | . 18 . | . 20 . | 70.00 | 60.00 | 10.00 | 60.00 |
| " | " | " | 85 | " " | 261321 | C | 7/10 | " 11 " | . . . | . 26 . | 90.00 | 80.00 | 10.00 | 80.00 |
| " | " | " | 80 | " " | 128305 | GN | " | " " " | . . . | . 27 . | 90.00 | 90.00 | | 90.00 |
| " | " | " | 99 | " " | 563733 | PL | " | . . . | . . . | . . . | | 90.00 | | 90.00 |
| " | " | " | 75 | " " | 123336 | SF | " | . . . | . . . | . 26 . | 80.00 | 80.00 | | 80.00 |
| " | " | " | 81 | " " | 15398 | WP | " | . . . | . . . | . . . | 80.00 | 80.00 | | 80.00 |
| " | " | " | 90 | " " | 63574 | MC | " | . . . | . . . | . . . | 80.00 | 80.00 | | 80.00 |
| " | " | " | 90 | " " | 53196 | CNW | " | . . . | . . . | . 23 . | 50.00 | 50.00 | | 50.00 |
| " | " | " | 82 | " " | 70534 | St P | " | . . . | . . . | . . . | 50.00 | 50.00 | | 50.00 |
| " | " | " | 81 | " " | 882342 | K | 7/16 | . 17 . | . . . | . 20 . | 6.00 | 6.00 | | 6.00 |
| " | " | " | 886 | " " | 105926 | CNW | " | . . . | . . . | . 27 . | 40.00 | 40.00 | | 40.00 |
| " | " | " | 91 | " " | 15151 | GT | " | . . . | . . . | . . . | 40.00 | 40.00 | | 40.00 |

The above Linters were compressed in transit before reaching Rock Island Rails and consigned to Little Rock for storage only.

| | | | |
|---|---|---|---|
| As Chgd. & Reported | 766.00 | | |
| Should charge | | 980.00 | |
| Charged in Error | 20.00 | | 20.00 |
| | 746.00 | | 980.00 |
| Not assessed or reported | 234.00 | | |
| To Collect | 980.00 | | 980.00 |

| From | Date Billed | Road Orig. | No. Bales | Consignee | Car Number | Car Initial | Date of Transfer | Construc. Placed | Actually Placed | Date Released | As Chgd. | Should Chg. | Chgd. in Error | O. K. Collect. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Cushing Okla. | 6/27 | A. T. S. F. | 86 | DuPont DeM | 51997 | NYC | 7/2 | | 7 2 D | 7 6 6p | 3.00 | 3.00 | | 3.00 |
| " | " | " | 104 | " " | 25526 | SP | " | | . . . | . 2 . | | | | |
| Dallas Texas | 6/19 | G. C. S. F. | 70 | " " | 90104 | NH | 7/2 | | 7 2 D | 7 2 6p | | | | |
| " | " | " | 70 | " " | 26062 | SSW | 7/6 | 7 3 7a | . 9 . | . 10 . | 12.00 | 12.00 | | 12.00 |
| " | 6/23 | " | 70 | " " | 33972 | DLW | 7/6 | 7 8 7a | . 13 . | . 17 . | 30.00 | 30.00 | | 30.00 |
| " | " | " | 70 | " " | 13496 | K | " | . . . | . 18 . | . 20 . | 60.00 | 60.00 | | 60.00 |
| " | " | " | 70 | " " | 5510 | FWD | " | . . . | . . . | . 20 . | 70.00 | 60.00 | 10.00 | 60.00 |
| " | " | " | 70 | " " | 103751 | Erie | " | . . . | . . . | . 20 . | 70.00 | 60.00 | 10.00 | 60.00 |
| " | " | " | 100 | " " | 8489 | AT | " | . . . | . 13 . | . 17 . | 30.00 | 30.00 | | 30.00 |
| " | " | " | 70 | " " | 124902 | SF | " | . . . | . 9 . | . 13 . | 18.00 | 12.00 | 6.00 | 12.00 |
| " | 7/10 | " | 80 | " " | 124900 | " | 7/16 | . 17 . | . 18 . | . 27 . | | 40.00 | | 40.00 |
| " | " | " | 79 | " " | 131897 | O | — | . . . | . . . | . . . | | 40.00 | | 40.00 |
| Houston Texas | 5/29 | " | 80 | " " | 40195 | Pa. | 6/10 | | 6 9 D | 6 13 6p | | 3.00 | | 3.00 |
| " | " | " | 90 | " " | 63448 | RI | " | 6 11 7a | " 10 " | " " " | | 3.00 | | 3.00 |
| Namgum Okla. | 6/27 | " | 77 | " " | 34452 | RI | 2/6 | 7 8 7a | 7 13 D | 7 17 6p | 30.00 | 30.00 | | 30.00 |

The above linters were compressed in transit before reaching the Rock Island Rails and Consigned to Little Rock for storage only.

| | | | | |
|---|---|---|---|---|
| As charged & reported | 323.00 | | | |
| Should charge | | 383.00 | | |
| Charged in Error | 26.00 | | 26.00 | 383.00 |

| | As Chgd. | Should Chg. | Chgd. in Error | To Collect |
|---|---|---|---|---|
| | 297.00 | | | 383.00 |
| Not Assessed or Reported | 86.00 | | | |
| To Collect #4 | 383.00 | | | 383.00 |
| To Collect #2 | 171.00 | | | 171.00 |
| To Collect #3 | 216.00 | | | 216.00 |
| To Collect #1 | 980.00 | | | 980.00 |
| Total to Collect | | | | 1750.00 |
| | | | War Tax | 52.50 |
| | | | | 1802.00 |

| From | Date Billing | Road Orig. | No. Bales | Consignee | | Car Number | Car Initial | Date of Transfer | Constly. Placed | Actually Placed | Released | As Chgd. | Should Chg. | Chgd. Error | To Collect |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Wichita Falls, Tex. | 6/27 | M. K. T. | 26 | DuPont | DeM | 137780 | SON | 7/5 | | 7 4 3p | 7 5 6p | 3.00 | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 2422 | PR | " | | . . . | . 9 . | | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 7175 | CO | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 8880 | MO | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 11065 | LEW | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 101390 | Erie | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 23520 | Soo L | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 22 | " | " | 92378 | K | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 23 | " | " | 515574 | PL | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 96019 | NYC | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 31566 | GHSA | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 26 | " | " | 55250 | PL | " | | . . . | . 10 . | | 6.00 | | 6.00 |
| " | " | " | 26 | " | " | 5651 | R | " | | . . . | . . . | | 6.00 | | 6.00 |
| " | " | " | 26 | " | " | 15820 | PL | " | | . . . | . . . | | 6.00 | | 6.00 |
| " | " | " | 40 | " | " | 64354 | MC | " | | . . . | . . . | | 6.00 | | 6.00 |
| " | " | " | 24 | " | " | 56494 | PL | " | | . . . | . . . | | 6.00 | | 6.00 |
| " | " | " | 40 | " | " | 3206 | IS | " | | . . . | . . . | | 6.00 | | 6.00 |

| From | Date Billing | Road Orig. | No. Bales | Consignee | | Car Number | Car Initial | Date of Transfer | Consgty. Placed | Actually Placed | Released | As Chgd. | Should Chg. | Chgd. Error | To Collect |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Wichita Falls, Tex. | 6/27 | M. K. T. | 26 | DuPont | DeM | 25325 | MP | 7/5 | | . . . | . 15 . | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 147754 | CP | " | | . . . | . . . | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 13344 | CS | " | | . . . | . . . | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 17952 | CIL | " | | . . . | . . . | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 145010 | Q | " | 7 6 7a | . 9 . | . 13 . | | 18.00 | | 18.00 |
| " | " | " | 26 | " | " | 211 | WM | " | . . . | . . . | . . . | | 18.00 | | 18.00 |
| " | " | " | 25 | " | " | 34057 | AT | " | . . . | . . . | . . . | | 18.00 | | 18.00 |
| " | " | " | 44 | " | " | 11103 | AA | " | . . . | . 14 . | . 17 . | | 40.00 | | 40.00 |
| " | " | " | 36 | " | " | 741924 | CNW | " | . . . | . . . | . 16 . | | 30.00 | | 30.00 |
| " | " | " | 40 | " | " | 81472 | K | " | . . . | . . . | . 17 . | | 40.00 | | 40.00 |
| " | " | " | 24 | " | " | 94245 | " | " | . . . | . . . | . 15 . | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 90826 | " | " | . . . | . . . | . . . | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 95241 | BO | " | . . . | . . . | . . . | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 6564 | NC | " | . . . | . . . | . . . | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 31594 | SF | " | . . . | . 9 . | . 13 . | | 18.00 | | 18.00 |
| " | " | " | 26 | " | " | 24642 | FSW | " | . . . | . . . | . . . | | 18.00 | | 18.00 |
| " | " | " | 26 | " | " | 40017 | PM | " | . . . | . . . | . . . | | 18.00 | | 18.00 |
| " | " | " | 26 | " | " | 8774 | PSN | 7/6 | 7 8 7a | . 18 . | . 20 . | | 60.00 | | 60.00 |

| From | Date Billing | Road Orig. | No. Bales | Consignee | | Car Number | Car Initial | Date of Transfer | Constly. Placed | Actually Placed | Released | As Chgd. | Should Chg. | Chgd. Error | To Collect |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Wichita Falls, Tex. | 6/27 | M. K. T. | 26 | DuPont | DeM | 79114 | CNW | 7/6 | . . . | . 13 . | . 17 . | | 30.00 | | 30.00 |
| " | " | " | 26 | " | " | 132720 | SON | " | . . . | . . . | . 16 . | | 24.00 | | 24.00 |
| " | " | " | 40 | " | " | 1273 | TBV | " | . . . | . . . | . . . | | 24.00 | | 24.00 |
| | | | | | | | | | Continue to Page 7 | | | | 638.00 | | 638.00 |
| " | " | " | 26 | " | " | 20294 | SooL | " | . . . | 7 13 3p | 7 18 6p | | 40.00 | | 40.00 |
| " | " | " | 26 | " | " | 106595 | Erie | " | . . . | . . . | . 17 . | | 30.00 | | 30.00 |
| " | " | " | 26 | " | " | 86958 | CNW | " | . . . | . 18 . | . 20 . | | 60.00 | | 60.00 |
| " | " | " | 26 | " | " | 20600 | CGW | " | . . . | . 13 . | . 17 . | | 30.00 | | 30.00 |
| " | " | " | 26 | " | " | 16393 | PL | " | . . . | . . . | . . . | | 30.00 | | 30.00 |
| " | " | " | 26 | " | " | 26937 | MP | " | . . . | . 18 . | . 20 . | | 60.00 | | 60.00 |
| " | " | " | 26 | " | " | 66720 | St. P | " | . . . | . . . | . . . | | 60.00 | | 60.00 |
| " | " | " | 26 | " | " | 14324 | LGW | " | . . . | . 16 . | . 17 . | | 30.00 | | 30.00 |
| " | " | " | 25 | " | " | 33219 | MLT | 7/10 | 7 11 7a | . 18 . | . 23 . | | 50.00 | | 50.00 |
| " | " | " | 25 | " | " | 195169 | NYC | " | . . . | . . . | . . . | | 50.00 | | 50.00 |
| Nocona Texas | 5/29 | M. K. T. | 33 | " | " | 14716 | LP | 6/3 | | 6 2 2p | 6 4 6p | | | | |
| " | " | " | 36 | " | " | 44236 | SSW | " | | . . . | . . . | | | | |
| " | " | " | 33 | " | " | 34340 | ACH | " | | . . . | . . . | | | | |
| " | " | " | 34 | " | " | 102192 | GT | " | | . . . | . . . | | | | |
| " | 5/31 | | 36 | " | " | 201720 | CMPS | 6/5 | | 6 5 1p | 6 11 6p | | 9.00 | | 9.00 |

| From | Date Billing | Road Orig. | No. Bales | Consignee | | Car Number | Car Initial | Date of Transfer | Constly. Placed | Actually Placed | Released | As Chgd. | Should Chg. | Chgd. Error | To Collect |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Nocona Texas | 5/31 | M. K. T. | 34 | DuPont | DeM. | 24476 | MO | 6/5 | | . . . | . . . | | 9.00 | | 9.00 |
| " | " | " | 31 | " | " | 31050 | SooL | " | | . . . | . . . | | 9.00 | | 9.00 |
| " | " | " | 33 | " | " | 20750 | SW | 6/10 | | 6 10 2p | . 13 . | | 3.00 | | 3.00 |
| " | 6/1 | " | 33 | " | " | 5194 | CNO | 6/12 | | . 12 . | . 15 . | | 3.00 | | 3.00 |
| " | " | " | 33 | " | " | 104505 | Erie | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | 6/5 | " | 33 | " | " | 86253 | K | 6/13 | | . 13 . | . 19 . | | 9.00 | | 9.00 |
| " | " | " | 35 | " | " | 5252 | FWD | " | | . . . | . . . | | 9.00 | | 9.00 |
| " | " | " | 33 | " | " | 50630 | PM | " | | . . . | . . . | | 9.00 | | 9.00 |
| " | " | " | 36 | " | " | 113987 | Q | " | | . . . | . . . | | 9.00 | | 9.00 |
| Shamrock Texas | 6/4 | G. R. I. G. | 48 | " | " | 10177 | GN | 6/10 | | 6 9 2p | 6 13 6p | | 3.00 | | 3.00 |
| " | " | " | 48 | " | " | 28319 | NP | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 21 | " | " | 70902 | Erie | " | | . . . | . . . | | 3.00 | | 3.00 |
| " | " | " | 40 | " | " | 47941 | NP | 6/12 | 6 13 7a | . 17 . | . 26 . | | 60.00 | | 60.00 |
| Norman Okla. | 6/12 | M. K. T. | 42 | " | " | 36962 | IC | 6/18 | 6 19 7a | 6 26 4p | 6 27 6p | | 24.00 | | 24.00 |
| " | 6/18 | " | 42 | " | " | 172222 | Ic | 6/24 | | . 24 . | . 27 . | | 3.00 | | 3.00 |
| " | " | " | 35 | " | " | 41970 | NP | " | 6 25 7a | . 25 . | . 26 . | | | | |
| " | " | " | 42 | " | " | 26516 | " | " | . . . | . 27 . | 7 2 . | | 18.00 | | 18.00 |

| From | Date Billing | Road Orig. | No. Bales | Consignee | | Car Number | Car Initial | Date of Transfer | Constly. Placed | Actually Placed | Released | As Chgd. | Should Chg. | Chgd. Error | To Collect |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Norman Okla. | 6/18 | M. K. T. | 40 | DuPont | DeM. | 37033 | RS | 6/27 | | . . . | . 73 . | | 9.00 | | 9.00 |
| " | " | " | 42 | " | " | 212478 | NYC | " | | . . . | . . . | | 9.00 | | 9.00 |
| " | 6/22 | " | 42 | " | " | 34802 | IC | 6/28 | | . . . | . 2 . | | 3.00 | | 3.00 |
| | | | | | | | | | Continued to Page 8 | | | | 647.00 | | 647.00 |
| Boswell Okla. | 6/7 | Frisco | 31 | " | " | 173517 | IC | 6/18 | 6 19 7a | 6 26 1p | 6 27 6p | | 24.00 | | 24.00 |
| " | " | " | 26 | " | " | 4483 | PN | " | . . . | . 25 . | . . . | | 24.00 | | 24.00 |
| " | " | " | 27 | " | " | 35127 | CEI | " | . . . | . 20 . | . . . | | 24.00 | | 24.00 |
| " | " | " | 27 | " | " | 4159 | BRP | " | . . . | . . . | . . . | | 24.00 | | 24.00 |
| " | " | " | 27 | " | " | 105304 | GT | " | . . . | . 17 . | . 26 . | | 18.00 | | 18.00 |
| " | " | " | 25 | " | " | 3619 | KCMo | " | 6 19 7a | . 26 . | . 27 . | | 24.00 | | 24.00 |
| " | " | " | 25 | " | " | 101801 | Erie | " | . . . | . 26 . | . . . | | 24.00 | | 24.00 |
| " | 6/18 | | 25 | " | " | 12121 | Pa | 6/27 | | . 27 . | 7 2 . | | 6.00 | | 6.00 |
| " | " | " | 22 | " | " | 133163 | SF | " | | . 27 . | . . . | | 6.00 | | 6.00 |
| Local Linters* | | | | | | | | | | | | | | | |
| McAlister Okla. | 6/20 | RI | 36 | " | " | 131801 | Q | 6/24 | 6 25 7a | 6 27 9a | 6 28 6p | | 6.00 | | 6.00 |
| " | " | " | 42 | " | " | 123259 | SF | " | . . . | . . . | . . . | | 6.00 | | 6.00 |
| " | " | " | 42 | " | " | 12871 | CS | " | . . . | . . . | . . . | | 6.00 | | 6.00 |

| From | Date Billing | Road Orig. | No. Bales | Consignee | | Car Number | Car Initial | Date of Transfer | Constly. Placed | Actually Placed | Released | As Chgd. | Should Chg. | Chgd. Error | To Collect |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| McAlister Okla. | 6/20 | RI | 30 | DuPont | DeM. | 2460 | CEI | 6/24 | 6 25 7a | 6 27 9a | 6 28 6p | | 6.00 | | 6.00 |
| " | " | " | 44 | " | " | 43512 | RI | " | . . . | . . . | . . . | | 6.00 | | 6.00 |
| " | " | " | 40 | " | " | 17540 | CGW | " | | . 24 . | . 27 . | | 3.00 | | 3.00 |
| " | " | " | 40 | " | " | 3884 | GRI | " | 6 25 7a | . 27 . | 7 2 . | | 18.00 | | 18.00 |
| " | " | " | 46 | " | " | 31305 | RI | " | . . . | . . . | . . . | | 18.00 | | 18.00 |
| " | " | " | 28 | " | " | | | | . . . | . . . | . . . | | | | |
| | | | | | | | | | Sheet 8 | | | | 243.00 | | 243.00 |
| | | | | | | | | | Sheet 7 | | | | 647.00 | | 647.00 |
| | | | | | | | | | Sheet 6 | | | | 638.00 | | 638.00 |
| | | | | | | | | | Sheet 4 | | | | 1750.00 | | 1750.00 |
| | | | | | | | | | | | | | 3278.00 | | |
| | | | | | | | | | | | | | | | 3278.00 |
| | | | | | | | | | | | | | War Tax | | 98.34 |
| | | | | | | | | | | | | | | | 3376.34 |

(The cars Linters from McAlister, Okla. consigned to Little Rock for compression and storage.)

See Sheet #6-7-8.

Linters from Wichita Falls, Texas, Nocona, Texas, Norman, Okla. via M. K. & T. Boswell, Okla. via Frisco and Shamrock, Texas via C. R. I. & G. Consigned to Little Rock for storage but not positive as to compression.

| | | | Amount | War Tax | Total |
|---|---|---|---|---|---|
| Sheet | Nos. 1 to 4. Inc. | covering Linters compressed | 1750.00 | 52.50 | 1802.50 |
| " | " 5 | covering Linters from U S F Co. | 252.00 | 7.56 | 259.56 |
| " | " 6 to 7 | covering Linters uncompressed | 1528.00 | 45.84 | 1573.84 |
| | | | | | 3635.90 |

Endorsed: Filed in the District Court on Sept. 23, 1921.

19 (Record entry of filing of Motion of Defendant to quash service of summons.)

October 14, 1921. Before Judge Trieber.

On this day comes the defendant by its attorneys, Rose, Hemingway, Cantrell and Loughborough, and files herein its motion to quash service of summons.

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20 Motion to Quash Summons and Dismiss.

The defendant appears only for the purpose of making this motion; and says that it is not an inhabitant of this District, as is shown on the fact of the complaint herein; and is not subject to suit or service of summons in this district.

Wherefore, defendant prays that the summons herein be quashed and that this cause be dismissed for want of jurisdiction.

ROSE, HEMINGWAY, CANTRELL
& LOUGHBOROUGH,
By J. F. Loughborough,
Attorneys for Defendant.

Endorsed: Filed in the District Court on October 14, 1921.

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21 (Order, granting defendant leave to withdraw motion to quash service of summons and sustaining of demurrer of defendant to complaint.)

February 25, 1922. Before Judge Trieber.

James C. Davis, Director General of Railroads, as Agent,
Plaintiff,
vs.
E. I. DuPont DeNemours & Company, Defendant.

Comes the plaintiff by George B. Pugh, his attorney, and come the defendants by C. A. Cunningham, its attorney, and said defendants ask leave of the Court to withdraw the motion to quash the service of summons herein which is by the Court granted and said motion to quash is accordingly withdrawn. Thereupon said defendants by leave of the Court file herein their demurrer to the complaint and said demurrer now coming on for hearing and the Court having heard argument of counsel thereon and being well and sufficiently advised in the premises,

It is considered and ordered that said demurrer to the complaint be and the same is hereby sustained. And the plaintiff electing to stand upon said complaint and declining to plead further it is ordered and adjudged that the said complaint be and the same is hereby dismissed and that the defendants recover their costs herein.

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22 (Demurrer of Defendant to Complaint.)

The defendant hereby withdraws its plea to the jurisdiction of the court and demurs to the complaint because it does not state facts sufficient to constitute a cause of action in this:

The face of the complaint shows that the cause of action is barred by the statute of limitations.

The plaintiff is without authority to bring the suit.

(Signed) C. A. CUNNINGHAM,
Attorney for the Defendant.

Endorsed: Filed in the District Court on Feb. 25, 1922.

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23 (Record Entry of filing of Petition for Writ of Error, etc.)

May 19, 1922.

Comes the plaintiff by George B. Pugh, Esq., his attorney, and files herein his assignment of errors and petition for writ of error, which writ of error is allowed returnable within sixty days upon the execution of a bond in the sum of $250.00 with good and sufficient sureties, conditioned as required by law, said bond to be approved by the Judge of this court.

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24 Assignment of Errors.

James C. Davis, Director General of Railroads, Agent, plaintiff in error, makes the following assignment of errors in the above entitled case:

1. The Court erred in sustaining the demurrer.
2. The Court erred in dismissing the complaint.
3. The judgment of the court is contrary to the law.

Wherefore, for the errors above assigned, the said James C. Davis, Director General of Railroads, Agent, plaintiff in

error, prays that the judgment rendered in this case be reversed, set aside, and held for naught.

(Signed) THOS. S. BUZBEE,
(Signed) GEORGE B. PUGH,
(Signed) H. T. HARRISON,
Attorneys for Plaintiff in Error.

Endorsed: Filed in the District Court on May 19, 1922.

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25 Petition for Writ of Error.

James C. Davis, Director General of Railroads, Agent, plaintiff in the above entitled cause, feeling himself aggrieved by the judgment of the court rendered on the 25th day of February, 1922, comes now by Thos. S. Buzbee, George B. Pugh and H. T. Harrison, his attorneys, and petitions said court for an order allowing said plaintiff to perfect a writ of error to the Honorable Circuit Court of Appeals for the 8th Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and upon the filing of said security all further proceedings in this cause be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Eighth Circuit, and your petitioners will ever pray.

(Signed) THOS. S. BUZBEE,
(Signed) GEORGE B. PUGH,
(Signed) H. T. HARRISON,
Attorneys for Plaintiff.

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Writ of error granted upon the filing of bond in the sum of $250.00 to be approved by me.

(Signed) JACOB TRIEBER, Judge.

Endorsed: Filed in the District Court on May 19, 1922.

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(Record entry of filing of Bond on Writ of Error and approval thereof.)

May 20, 1922.

Comes the plaintiff by George B. Pugh, Esq., his attorney, and presents to the Court his bond on writ of error in the sum of $250.00 and the Court having examined said bond,

It is ordered that the same be entered and it is hereby approved. Said plaintiff also files his writ of error and citation with service of the same duly accepted by the attorney for the defendant herein.

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Bond on Writ of Error.

Know All Men By These Presents: That we, James C. Davis, Director General of Railroads, Agent, as principal, and National Surety Company, as surety, are held and firmly bound unto E. I. Dupont De Nemours & Company, defendant, in the full and just sum of $250.00 to be paid to the said E. I. Dupont De Nemours & Company, its successors or assigns, which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators or assigns jointly and severally by these presents.

Sealed with our seals and dated this 20th day of May, in the year of our Lord, 1922.

Whereas, lately at the October Term, A. D. 1921, of the District Court of the United States for the Western Division of the Eastern District of Arkansas, in a suit pending in said court between James C. Davis, Director General of Railroads, Agent, plaintiff, and E. I. Dupont De Nemours & Company, defendant, the plaintiff has obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the defendant, citing and admonishing it to be and appear in the U. S. Circuit Court of Appeals for the 8th Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the condition of said above obligation is such that if said James C. Davis, Director General of Railroads,
28 Agent, Plaintiff, shall prosecute his writ of error to effect, and answer all damages and costs, if he fails to

make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and Delivered in the presence of:

JAMES C. DAVIS,
Director General of Railroads, Agent.
By George B. Pugh, His Attorney.

NATIONAL SURETY COMPANY,
Surety,
By J. P. Lem, Resident Vice-President.
By C. E. Clift,
Resident Assistant Secretary.

Approved:
(Seal) (Signed) Jacob Trieber.

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29 (Citation and Acceptance of Service.)

In the District Court of the United States for the Eastern District of Arkansas, Western Division.

James C. Davis, Director General of Railroads, Agent, Plaintiff,
vs.
E. I. Dupont De Nemours & Company, Defendant.

United States of America To E. I. Dupont De Nemours & Company—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, for the 8th Circuit, in the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office in the District Court of the United States, The Eastern District of Arkansas, Western Division, wherein James C. Davis, Director General of Railroads, Agent, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Jacob Trieber, Judge of the District Court of the United States, Eastern District of Arkansas, this 19th day of May, 1922.

JACOB TRIEBER,
U. S. District Judge for the
Eastern District of Ark.

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Service of the above citation accepted this 22 day of May, 1922.

C. A. CUNNINGHAM,
Attorney for Defendant in Error.

Endorsed: Filed May 22nd, 1922. Sid. B. Redding, Clerk.

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30 (Clerk's Certificate to Transcript.)

United States of America Eastern District of Arkansas
Western Division.

I, Sid. B. Redding, Clerk of the District Court of the United States for the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the original remaining of record in my office, at Little Rock, Arkansas, of the Assignment of Errors, record and all proceedings in the case of James C. Davis, as Director General of Railroads, and as Agent, plaintiff, vs. E. I. De Nemours & Company, defendant, No. 6248-Law.

Seal
U. S. Dist. Court
East. Dist. of Ark.
West. Div.

In Witness Whereof, I have hereunto set my hand and the seal of said Court, this 10th day of June in the year of our Lord, One Thousand Nine Hundred and Twenty-two, and of the Independence of the United States of America, the One Hundred and Forty-sixth.

Attest:

SID B. REDDING, Clerk.

Filed Jul 15, 1922. E. E. Koch, Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Title omitted]

APPEARANCE OF COUNSEL FOR PLAINTIFF IN ERROR—Filed July 15, 1922

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

Thos. S. Buzbee, Geo. B. Pugh, H. F. Harrison, Little Rock, Ark.

[File endorsement omitted.]

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APPEARANCE OF COUNSEL FOR DEFENDANT IN ERROR—Filed September 5, 1922

The Clerk will enter my appearance as Counsel for the Defendant in Error.

C. A. Cunningham.

[File endorsement omitted.]

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 8TH CIRCUIT, DECEMBER TERM, 1922

ORDER OF SUBMISSION

Tuesday, January 16, 1923.

This cause having been called for hearing in its regular order and counsel not appearing for either party to make oral argument, this cause is thereupon taken by the Court as submitted on the transcript of the record from said District Court and the briefs of counsel filed herein, to be submitted to a third Judge if deemed advisable by the Court.

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UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Title omitted]

OPINION—Filed March 5, 1923

STONE, Circuit Judge, delivered the opinion of the Court.

This is a writ of error from a final judgment entered after sustaining a demurrer to the petition. The action is by the Director General of Railroads against a shipper for demurrage charges. The de-

murrer was based and sustained upon the ground that the action was barred by limitation.

The sole substantial question presented here is whether the action was barred by limitation. It was brought slightly more than three years after it arose. The contention of defendant in error, sustained by the court, is that Section 424 of the Transportation Act (41 Stat. L. 492), providing a limitation of three years for suits by carriers for the recovery of their charges, is applicable to suits by the Director General for such charges. The contention of plaintiff in error is that the Director General, as to such charges and suits therefor, represents the United States in its sovereign capacity and that Congress did not intend the above provision to apply to him.

In the control and operation of the railways under the war power, the government was exercising a sovereign power and acting in its capacity as sovereign. Northern P. Ry. Co. v. North Dakota, 250 U. S. 135; Mo. Pac. R. R. Co. v. Ault, 256 U. S. 554; North Carolina R. R. Co. v. Lee, — U. S. — (decided Oct. 16, 1922); In Re Tidewater Coal Exchange, 280 Fed. 648, 649 (C. C. A., 2nd Circuit). A debt arising out of such governmental control is held to be a debt due the United States. In Re Hibner Oil Co., 264 Fed. 667 (C. C. A., 7th Circuit); Davis v. Pullen, 277 Fed. 650 (C. C. A., 1st Circuit); In Re Tidewater Coal Exchange, 280 Fed. 648 (C. C. A., 2nd Circuit).

Although a government when enforcing rights arising out of the exercise of its sovereign powers is not ordinarily treated as within statutes of limitations applicable to other litigants, yet it may be so included if it consent to such inclusion. And whether the United States is so included in a statutory limitation enacted by Congress is a matter of statutory construction. The rule of construction in such cases is that it must clearly appear that such inclusion was intended. Hays v. U. S., 175 U. S. 248, 260; Gibson v. Chouteau, 13 Wall. 92; Chic. & N. W. Ry. Co. v. Ziebarth, 245 Fed. 334, 337 (this court).

With this rule of construction in mind, we turn to consider Section 424 of the Transportation Act (41 Stat. L. 492) relied upon by the defendant in error and the trial court as containing a limitation on the Director General. The portion of that section now material is "all actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after." No mention is made therein of the United States or of its representative, the Director General. But it is argued that the word "carriers" was intended to be so inclusive. At the start, we are thus met with uncertainty, because "carriers," as used in the Act, might very well mean only the transportation companies which were about to resume control and operation of their properties. Considering that one of the two main purposes of the Act was to lay down rules governing such carriers in the future control and operation of their properties, this narrower meaning might well be regarded as intended; and this thought has added emphasis as to the matter now being considered,

when we find that this section (424) is an amendment of the Interstate Commerce statutes in existence before federal control and obviously meant to govern after federal control. It is, also, noteworthy that another section of the Transportation Act (Section 206) deals specifically with limitations as to claims and actions brought against the Director General. In short, even if a construction of the Act would not lead strongly to the conclusion that the Government was not included within the term "carriers" as used in Section 424; yet it certainly is true, that such inclusion is doubtful. Not being clear, the rule of construction above stated takes control and forces the conclusion that the statute does not limit suits such as this.

It is, also, suggested by defendant in error that the action should have been brought in the name of the United States and not of the Director General. We think the statement of this suggestion reveals the unsubstantial character thereof. Certainly, Section 202 of the Transportation Act when considered in connection with the preceding legislation, executive action and methods relating to federal control, must dispose of this suggestion.

The judgment is reversed and the case remanded for proceedings in compliance with this opinion.

Filed March 5, 1923.

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UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Title omitted]

In Error to the District Court of the United States for the Eastern District of Arkansas

JUDGMENT

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that James C. Davis, Director General of Railroads, Agent, have and recover against E. I. Dupont De Nemours and Company the sum of —— Dollars for his costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions for proceedings in compliance with the opinion of this Court.

March 5, 1923.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 8TH CIRCUIT

PETITION OF DEFENDANT IN ERROR FOR A REHEARING—Filed May 3, 1923

Comes the defendant in error, E. I. Dupont de Nemours & Coinpany, by its attorney, C. A. Cunningham, and moves the court to grant a rehearing in this action and, inasmuch as it has not been argued orally, to fix a time at which counsel may be heard in support of this petition.

The grounds on which this petition is presented are:

1. The court erred in ruling that the third paragraph of the 16th section of the Interstate Commerce Act, as amended by the Transportation Act of 1920, does not apply to the plaintiff.

2. The court erred in ruling that James C. Davis, Director General of Railroads, had authority to bring this suit in his capacity as Federal agent.

Wherefore, petitioner prays that this honorable court enter an order permitting a rehearing of this cause, and that it fix a time at which counsel may be heard orally.

Respectfully submitted, C. A. Cunningham, Attorney for Defendant in Error.

Jurat showing the foregoing was duly sworn to by C. A. Cunningham omitted in printing.

[File endorsement omitted.]

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 8TH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ IN SUPPORT OF PETITION FOR REHEARING—Filed May 9, 1923

Now comes Luther M. Walter, of Chicago, Illinois, attorney and counsel for the National Industrial Traffic League, and presents this his motion for leave to appear in the above entitled case as amicus curiæ and to make suggestions and argument as such in support of petition for rehearing filed by counsel for defendant in error, and in support of said motion shows as follows:

The National Industrial Traffic League is an organization of some 300,000 shippers of freight in interstate commerce located throughout the various states of the United States. Charles Rippin, of St. Louis, is president and Joseph H. Beek, of Chicago, Ill., is executive secretary, thereof, and your petitioner is attorney and counsel for said organization.

During the period of Federal control the members of said organiza-

tion shipped many hundred thousand cars of freight and paid the charges thereon as demanded by the Director General or his agents. More than three years have elapsed since the termination of Federal control. Members of your petitioner are being presented with bills for undercharges on shipments of freight moving during the period of Federal control; the amounts involved are small and are not sufficient to warrant the expense of a defense in each separate case. The aggregate of bills for undercharges which have been so presented but which have not been made the subject of suit sums into many thousands of dollars. If the decision of the District Court in the present case holding that the Director General of Railroads, as agent, is subject to the three-year statute of limitations provided in paragraph (3) of Section 16 of the Interstate Commerce Act is a correct interpretation of law, then all such suits are barred and the shippers of the United States will be relieved from the vexation, expense and necessity of defending suit for undercharges. The members of your petitioner, therefore, are vitally interested in the principle of law embodied in the decision herein. On behalf of the membership of the National Industrial Traffic League, petitioner desires leave to appear in said case as amicus curiæ and to present suggestions and argument as such in support of the petition for rehearing filed by counsel for defendant in error.

Wherefore, petitioner prays that this honorable court will enter an order permitting him to appear as amicus curiæ in the above entitled proceeding for the purposes stated above.

Luther M. Walter, Petitioner.

[File endorsement omitted.]

To George B. Pugh, Solicitor for Plaintiff in Error, and C. A. Cunningham, Solicitor for Defendant in Error:

Please take notice that on Wednesday, May 9, 1923, I will present to the Circuit Court of Appeals at St. Paul, the attached motion and suggestions and argument as amicus curiæ in support of petition for rehearing in the above entitled proceeding.

Luther M. Walter, Petitioner.

Received a copy of the above notice this — day of May, A. D. 1923, at — o'clock — M.

Geo. B. Pugh, Solicitor for Plaintiff in Error.

Comes Geo. B. Pugh, Attorney for Plaintiff in Error, in the above entitled cause, and accepts service of notice that Luther M. Walter, Attorney, will present motion on May 9th, 1923, to this Court, asking permission to appear amicus curiæ in this cause.

Geo. B. Pugh, Attorney for Plaintiff in Error.

[File endorsement omitted.]

ACCEPTANCE OF SERVICE BY DEFT. IN ERROR OF MOTION FOR LEAVE TO APPEAR AS AMICUS CURIÆ IN SUPPORT OF PETITION FOR REHEARING—Filed May 9, 1923

Comes now E. I. Dupont De Nemours & Company, Defendant in Error, by its Attorney, C. A. Cunningham, and acknowledges receipt of a notice from Luther M. Walter advising that the said Luther M. Walter will appear before the United States Circuit Court of Appeals at St. Paul, Minnesota on the ninth (9th) day of May, 1923 and move for permission to intervene in this action and file brief on rehearing as Amicus Curiæ. Further notice of said motion and appearance is hereby waived.

C. A. Cunningham, Attorney for Defendant in Error.

[File endorsement omitted.]

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 8TH CIRCUIT, MAY TERM, 1923

ORDER DENYING MOTION OF LUTHER M. WALTER FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ, ETC.

Thursday, May 24, 1923.

In this cause Mr. Luther M. Walter, Attorney and Counsel for The National Industrial Traffic League, presented to this Court on May 9, 1923, a motion for leave to file a brief as Amicus Curiæ in support of the petition of defendant in error for a rehearing, the said motion was referred to the Judges who heard this cause in this Court on its merits, and it having been directed that said motion should be denied, It is, therefore, now here Ordered by this Court that said motion be, and the same is hereby, denied.

May 24, 1923.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 8TH CIRCUIT MAY TERM, 1923

ORDER DENYING PETITION FOR REHEARING

Thursday, May 24, 1923.

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Defendant in Error.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby denied.

May 24, 1923.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 8TH CIRCUIT,

MOTION FOR STAY OF MANDATE—Filed June 2, 1923

Now comes E. I. Dupont De Nemours and Company, by its counsel, C. A. Cunningham, and respectfully moves the Court to stay the issuance of the mandate in this cause for a period of sixty days, owing to the fact that the defendant in error expects to promptly file a petition for writ of error or make an application for a writ of certiorari to the Supreme Court and that the preparation and filing of said petition or application will proceed promptly and expeditiously.

C. A. Cunningham, Attorney for E. I. Dupont De Nemours and Company.

[File endorsement omitted.]

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 8TH CIRCUIT
MAY TERM, 1923

ORDER STAYING MANDATE FOR PERIOD OF SIXTY DAYS

Thursday, June 7, 1923.

On motion of defendant in error, It is ordered that the issuance of the mandate in this cause be, and the same is hereby, stayed for a period of sixty (60) days from and after this date, pending a petition to the Supreme Court of the United States for a writ of certiorari, unless the said petition shall have sooner been disposed of.

June 7, 1923.

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UNITED STATES CIRCUIT COURT OF APPEALS, 8TH CIRCUIT

CLERK'S CERTIFICATE

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Arkansas as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true, and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein James C. Davis, Director General of Railroads, Agent, was Plaintiff in Error, and E. I. Dupont De Nemours and Company, was Defendant in Error, No. 6138, as full, true, and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-fourth day of July, A. D. 1923.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal of the United States Circuit Court of Appeals, Eighth Circuit.)

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Title omitted]

WRIT OF CERTIORARI AND RETURN—Filed November 16, 1923

It is hereby stipulated that the transcript already filed, in the Clerk's office of the Supreme Court of the United States, with the petition for Writ of Certiorari, be taken as a return of said Writ, dated the 5th day of November, 1923.

Geo. B. Pugh, Counsel for James C. Davis, Director General of Railroads. Z. B. Harrison, C. A. Cunningham, Counsel for E. I. Du Pont De Nemours & Company.

[File endorsement omitted.]

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UNITED STATES OF AMERICA, ss:

(Seal of the Supreme Court of the United States.)

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which James C. Davis, Director General of Railroads, Agent, is plaintiff in error, and E. I. Du Pont De Nemours & Company is defendant in error, No. 6138, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Eastern District of Arkansas, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

Return to Writ

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of James C. Davis, Director General of Railroads, Agent, Plaintiff in Error, vs. E. I. Du Pont De Nemours & Company, No. 6138, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this fourteenth day of November, A. D. 1923.

E. E. Koch, Clerk U. S. Circuit Court of Appeals, Eighth Circuit. (Seal of the United States Circuit Court of Appeals, Eighth Circuit.)

[File endorsement omitted.]

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[File endorsement omitted.]

Endorsed on cover: File No. 29,827. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 517. E. I. Du Pont De Nemours & Company, petitioner, vs. James C. Davis, Director General of Railroads, agent. Petition for writ of certiorari and exhibit thereto, with notice and proof of service. Filed August 22d, 1923. File No. 29,827.

No. 517

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1923

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JAMES C. DAVIS, Director General of Railroads, as Agent,
Respondent,

vs.

E. I. DUPONT DE NEMOURS & COMPANY,
Petitioner.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

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## ABSTRACT AND BRIEF FOR PETITIONER

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C. A. CUNNINGHAM,
Z. B. HARRISON,
Counsel for Petitioner.

Clifford A. Browder,
of counsel

MEMPHIS LINOTYPE PRINTING CO.

## INDEX

## LIST OF AUTHORITIES

No. 517

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1923

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JAMES C. DAVIS, Director General of Railroads, as Agent,
Respondent,

vs.

E. I. DUPONT DE NEMOURS & COMPANY,
Petitioner.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

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## ABSTRACT AND BRIEF FOR PETITIONER

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### PRELIMINARY STATEMENT

James C. Davis, Director General of Railroads, brought this suit in his capacity as Federal Agent in the District Court of the United States for the Eastern District of Arkansas, Western Division, on

the 23rd day of September, A. D. 1921, for the recovery of demurrage charges alleged to have accrued to the Director General of Railroads during May, June and July, 1918. The jurisdiction was invoked solely on diversity of citizenship. A demurrer was filed and sustained by the District Court, and the cause was taken, by writ of error, to the Circuit Court of Appeals for the Eighth Circuit, where on March 5th, 1923, the judgment of the District Court was reversed and the cause remanded. A petition for rehearing was filed and denied. The mandate was stayed and the record, with the petition for writ of certiorari and brief thereon, was lodged in this Court. On October 2nd, 1923, the writ of certiorari was granted.

## ABSTRACT

### Substance of the Complaint

The Respondent alleged; that he had been duly appointed and commissioned by the President of the United States, Director General of Railroads, as agent, under authority of the Transportation Act of 1920; that he was a citizen and resident of the State of New York and maintained an office in the City of Washington, District of Columbia; that the Petitioner is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Arkansas; during the months of May, June and July, 1918, the Petitioner caused a number of cars of cotton linters to move over the Chicago, Rock Island & Pacific Railway Company's line from points in Oklahoma and

Texas, for delivery to the Little Rock Compress Co. and the Petitioner at Little Rock, Ark.; that under the tariffs in effect at the time, demurrage in the sum of three thousand two hundred eighty ($3,280.00) dollars accrued at Little Rock upon said shipments; the origin, destination, car numbers and initials, dates of placement and date of release of each car, and amount of demurrage accruing on each car, were set forth in an exhibit which was made a part of the complaint. (Printed record, pp. 3 and 4.)

**The Demurrer**

The Petitioner filed a motion to quash the summons and dismiss the complaint for want of jurisdiction, but later, by leave of the Court, withdrew said motion and filed demurrer on the grounds that the complaint showed on its face that (1) the cause of action was barred by the statute of limitations, and (2) that the Plaintiff was without authority to bring the suit. (Printed record, pp. 32 and 33.)

The District Court sustained the demurrer. The Respondent elected to stand upon the complaint, and declined to plead further. The complaint was dismissed. (Printed record, p. 33.)

**The Writ of Error**

In due time the Respondent filed his petition for writ of error, an assignment of errors, and a writ of error was duly granted upon the execution of a bond, to be approved by the Court. (Printed record, pp. 33 and 34.) The bond was duly filed and approved, citation issued thereon, service thereof

duly accepted, and in due time the writ was lodged in the United States Circuit Court of Appeals for the Eighth Circuit. (Printed record, pp. 35-36-37.)

The cause was submitted in the Circuit Court of Appeals upon the transcript of the record, the briefs of Petitioner and Respondent, and upon March 5th, 1923, the judgment of the District Court was reversed and the cause remanded to the District Court for further proceeding. (Printed record, pp. 39-41.)

A petition and brief for rehearing was filed and notice thereof duly served. (Printed record, pp. 41-42-44.) On May 24th, 1923, said petition was denied and a motion, by Luther M. Walter, for leave to appear and file briefs as amicus curiae was also denied. (Printed record, pp. 44-45.) The mandate was stayed.

## THE WRIT OF CERTIORARI

Petition for writ of certiorari was filed with this Court, and on October 22nd, 1923, was granted. (Printed record, p. .....)

### Specifications of Error

I.

The decision of the Honorable Circuit Court of Appeals that the sixteenth section of the Commerce Act, as amended by Section 424 of the Transportation Act of 1920 (41 Stat. L. 492), is not applicable to suits by the Director General of Railroads for charges accruing during Federal control, was based on an erroneous interpretation of the amendment.

II.

The decision of the Honorable Circuit Court of Appeals that James O. Davis, Director General of Railroads, in his capacity as Federal Agent, was the proper party plaintiff, was based on an erroneous construction of the law.

## POINTS AND AUTHORITIES

### Issue I

It was within the power of this Court to grant the writ of certiorari.

Judicial Code, Paragraphs 128, 240.
American Construction Co. v. Jacksonville T. & W. K. R. Co., 148 U. S. 372, 384.
Forsythe v. Hammond, 166 U. S. 506, 514.
Denver v. New York Trust Co., 229 U. S. 123, 133.
The Three Friends, 166 U. S. 1, 49.
The Conqueror, 166 U. S. 110, 113.
Hamilton Brown Shoe Co. v. Wolff Bros. & Co., 240 U. S. 251, 257, 258.

### Issue II

The Honorable Circuit Court of Appeals erred in determining that Paragraph 3 of Section 16 of the Commerce Act, as amended by the Transportation Act, is not applicable to suits by the Director General of Railroads for charges accruing during Federal control.

### Point 1

It was the policy of the Congress and the Presi-

dent to operate Federally controlled roads without the usual immunity of sovereign from legal liability.

39 Stat. L. 619.

President's Proclamation of December 26th, 1917.

Sections 8, 9 and 10 of Federal Control Act.

President's Proclamation of April 11th, 1918.

Director General of Railroads v. Viscose Company, 254 U. S. 498, 502.

Missouri Pacific Ry. Co. v. Ault, 256 U. S. 554, 559, 560, 561.

**Point 2**

Section 16 (3) of the Commerce Act is retrospective.

Sohn v. Waterson, 84 U. S. 596, 599.

United States v. Director General, 80 I. C. C. 143, 150, 151.

Phillips v. Grank Trunk Ry., 236 U. S. 662, 666.

United States v. Interstate Commerce Commission, 246 U. S. 638, 644.

Kansas City Southern Ry. Co. v. Wolff, 261 U. S. 1, 33.

**Point 3**

The Director General is bound by the limitation in Section 16 (3) of the Act.

United States v. Director General, 80 I. C. C. 143.

Davis v. Dupont, 287 Fed. 522, 523, 524.

Section 206, Transportation Act.

Northern Pacific Ry. Co. v. N. Dak., 250 U. S. 135.

North Carolina R. R. Co. v. Lee, 67 L. Ed. 1.

In re Tidewater Coal Exchange, 280 Fed. 648.

In re Hibner Oil Co., 264 Fed. 667.

Davis v. Pullen, 277 Fed. 650.

**Point 4**

The Government stood in the shoes of the "carriers" during Federal Control and was included in the word "carriers" in Section 16 (3).

Section 10, Federal Control Act.

Missouri Pacific Ry. Co. v. Ault., 256 U. S. 554, 559, 560, 563.

**Point 5**

A receiver is a carrier under the Interstate Commerce Act.

United States v. Ramsey, 197 Fed. 144; 42 L. R. A. (ns) 1031, 1035.

United States v. Nickson et al., 235 U. S. 231, 233, 234.

Rutherford v. Union Pacific Ry. Co., 254 Fed. 880, 881.

Evans v. Union Pacific Ry. Co., 6 I. C. C. 520, 527.

**Point 6**

The exclusion of the Director General from certain obligations in the Interstate Commerce Act shows that he was subjected to all other rights and duties in said Act, including the restrictions in Section 16(3).

Director General v. The Viscose Co., 254 U. S. 498, 501, 502.

**Point 7**

Section 16 (3) should be construed to avoid discrimination and absurdity.

United States v. Southern Pac. R. R. Co., 230 Fed. 270, 275.

**Point 8**

The Transportation Act established no new limitation in Arkansas.

Cattle Raisers Association v. C. B. & Q. R. Co., 10 I. C. C. 83, 100, 104.

C. R. I. & P. R. Co. v. Lena Lumber Co., 99 Ark. 105.

**Issue III**

The decision of the Honorable Circuit Court of Appeals that James C. Davis, Director General, in his capacity as Federal Agent, was the proper party plaintiff was based on an erroneous construction of the law.

Sections 202, 206, 211 of the Transportation Act.

Director General of Railroads v. Struthers Furnace Company, 271 Fed. 792.

Philadelphia & Reading R. Co. v. Laurel Coal Mining Company, 276 Fed. 1019.

25 R. C. L. 981, par. 229.

## ARGUMENT

### Issue I

IT WAS WITHIN THE POWER OF THIS COURT TO GRANT THE WRIT OF CERTIORARI.

The only ground upon which the jurisdiction of the Federal Court was invoked in this case was the diversity of the citizenship of the parties. Under Section 128 of the Judicial Code the judgment of the Circuit Court of Appeals in such cases is final.

It can no longer be doubted that the Supreme Court, in causes of this kind, has authority, under the law, to issue writ of certiorari to the Circuit Court of Appeals.

"The exceptional power to review, upon certiorari, a decision of the Circuit Court of Appeals, rendered on appeal from an interlocutory order, is intended to be and is sparingly exercised. But there can be no doubt that the power exists where no appeal would lie from a final decree of that court, as is the case where the suit is one in which the jurisdiction of the court of first instance depended entirely upon diverse citizenship. Judicial Code, 128, 240 (36 Stat. L. 1133, 1157, chap. 231, U. S. Comp. Stat. Supp. 1911, pp. 193, 2283; American Constr. Co. v. Jacksonville T. & K. W. R. Co., 148 U. S. 372, 385, 37 L. Ed. 486, 491, 13 Sup. Ct. Rep. 758; Forsyth v. Hammond, 166 U. S. 506, 41 L. Ed. 1095, 17 Sup. Ct. Rep. 665. We think this is such a suit. The bill states that the trust company is a citizen of New York, that all the defendants are citizens of Colorado, and that 'this is a controversy wholly between citizens of different states.'"

Denver v. New York Trust Co., 229 U. S. 123, 133.
The Three Friends, 166 U. S. 1, 49.
The Conqueror, 166 U. S. 110, 113.
Hamilton Brown Shoe Co. v. Wolff Bros. & Co., 240 U. S. 251, 257, 258.

**Issue II**

THE HONORABLE CIRCUIT COURT OF APPEALS ERRED IN DETERMINING THAT PARAGRAPH 3 OF SECTION 16 OF THE COMMERCE ACT, AS AMENDED BY THE TRANSPORTA-

TION ACT, IS NOT APPLICABLE TO SUITS BY THE DIRECTOR GENERAL OF RAILROADS FOR CHARGES ACCRUING DURING FEDERAL CONTROL.

**Point 1**

IT WAS THE POLICY OF THE CONGRESS AND THE PRESIDENT TO OPERATE FEDERALLY CONTROLLED ROADS WITHOUT THE USUAL IMMUNITY OF THE SOVEREIGN FROM LEGAL LIABILITY.

The President by his proclamation of December 26th, 1917, under authority of the Act of August 29th, 1916 (39 Stat. L. 619), outlined his policy with reference to the operation of roads in the following language:

> "Until and except so far as said Director shall from time to time otherwise, by general or special orders, determine, such systems of transportation shall remain *subject to all existing statutes and orders of the Interstate Commerce Commission*, and to all statutes and orders and regulating commissions of various states in which said systems, or any part thereof, may be situated."
>
> President's Proclamation of Dec. 26th, 1917.

The Congress knew when it passed the Federal Control Act the policies which had been adopted by the President with reference to the Army Appropriation Act of 1916, and it approved said policy when it placed in the Federal Control Act the eighth, ninth and tenth sections.

"Section 8. That the President may execute any of the powers herein and heretofore granted him with relation to Federal Control, through such agencies as he may determine."

"Section 9. That the provisions of the Act entitled 'An Act Making Appropriation for the Support of the Army for the Fiscal Year Ending June 30th, 1917, and for other purposes,' approved August 29th, 1916, shall remain in force and effect except as expressly modified and restricted by this Act; and the President, in addition to the powers conferred by this Act, shall have and is hereby given such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred."

"Section 10. That *carriers, while under Federal control,* shall be subject to all laws and liabilities, *as common carriers,* whether arising under State or Federal laws, or at common law, except in so far as may be inconsistent with the provisions of this act or any other act applicable to such Federal control, or with any order of the President."

"Actions at law or suits in equity may be brought *by* or *against* such carriers and judgments rendered as now provided by law; and in any action at law, or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government. * * * After full hearing, the Commission may make such findings and orders as are authorized by the Act to regulate commerce, *as amended,* and said findings and orders shall be enforced as provided in said Act."

Secs. 8, 9, 10, Federal Control Act.

"* * * or with any orders of the President"

shows conclusively that the Congress contemplated

by Section 10 that it was a temporary expedient and subject to change at any time the President saw fit to change his policy.

On the 11th day of April, 1918, the President issued another proclamation which contained a provision identical with that quoted in his proclamation of December 26th, 1917. This proclamation, being subsequent to the passage of the Federal Control Act, shows that the President at that time had not deemed it advisable to change his policy.

After the Armistice, when the necessity for Federal control no longer existed, and the Congress deemed it advisable to put an end to Federal control, it continued the original policy by providing in the Transportation Act:

> "Section 202. The President shall, as soon as practicable after the termination of Federal control, adjust, settle, liquidate and wind up all matters, including compensation, and all questions and disputes of whatsoever nature, arising out of or incident to Federal control."
>
> 41 Stat. L. 459.
>
> "Section 206 (a). Actions at law, suits in equity and proceedings in admiralty, based on causes of action arising out of the possession, use, or operation by the President of the railroad or system of transportation of any carrier (under the provisions of the Federal Control Act, or of the Act of August 29, 1916), of such character as prior to Federal control could have been brought against such carrier, may, after the termination of Federal control, be brought against an agent, designated by the President for such purpose, which agent shall be designated by the President within thirty days after

the passage of this act. *Such actions, suits or proceedings may, within the periods of limitation now prescribed by State or Federal statutes, but not later than two years from the date of the passage of this act, be brought in any court which, but for Federal control, would have had jurisdiction of the cause of action had it arisen against such carrier.*"

41 Stat. L. 461.

"Section 211. All powers and duties conferred or imposed upon the President by the preceding sections of this Act, except the designation of the agent under Section 206, may be executed by him through such agency or agencies as he may determine."

41 Stat. L. 469.

The President, though empowered to do so, has never taken the Federal control from under the provisions of the Interstate Commerce Act, nor has he ousted the jurisdiction of the Commerce Commission.

Director General of Railroads v. The Viscose Co., 254 U. S. 498, 503.

**Point 2**

SECTION 16(3) OF THE COMMERCE ACT IS RETROSPECTIVE.

Section 16(3) of the Interstate Commerce Act, as amended by Section 424(3) of the Transportation Act of 1920 provides:

"Section 16(3). All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after. All complaints for the recovery of damages shall be filed with

> the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for recovery of charges in respect of the same service, in which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after * * * "

Though generally speaking, acts of limitation are not given a retrospective application, the language of Section 16(3) requires such application. Its language is almost identical with that of the statute considered in the leading case of Sohn v. Waterson, 84 U. S. 596, at page 597.

The statute provides:

> "All actions founded on any promissory note * * * shall be commenced within two years next after the cause or right of action shall have accrued and not after."

The Court said:

> "A statute of limitations may, undoubtedly, have effect upon actions which have already accrued as well as upon actions which accrue after its passage. Whether it does so or not will depend upon the language of the act and the apparent intent of the legislature to be gathered therefrom. When a statute declares generally that no action, or no action of a certain class,

shall be brought except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as to those arising in the future."

Sohn v. Waterson, 84 U. S. 596, 597.

The retrospective application of the first sentence in paragraph 3 is fortified by the construction by the Interstate Commerce Commission of the second and third sentences in paragraph 3. Said sentences provide:

> "All complaints for the recovery of damage shall be filed with the Commission within two years from the time the cause of action accrues and not after * * * *in either case the cause of action in respect of a shipment of property shall for the purpose of this section, be deemed to accrue upon the delivery or tender of delivery thereof by a carrier, and not after* * * *."*

The italicized portion regarding the time when the cause of action accrues was first inserted in the Commerce Act by Section 424(3) of the Transportation Act, and applies to suits by carriers for their charges, as well as to the complaints of shippers.

United States v. Director General, 80 I. C. C. 143, 150, 151.

Prior to the Transportation Act, the cause of action regarding complaints for the recovery of damages accrued from the date the charges were actually paid and not from the date of "delivery or tender of delivery."

Phillips v. Grand Trunk Ry., 236 U. S. 662, 666.

United States v. Interstate Commerce Commission, 246 U. S. 638.
Kansas City Southern Ry. Co. v. Wolff, 261 U. S. 1, 33.

Yet, with respect to complaints filed by the *United States as a shipper* for damages accruing during Federal Control, the Interstate Commerce Commission held that the United States was comprehended within Section 16(3) and must file its complaints, if at all, within two years after "*delivery or tender of delivery thereof by the carrier,*" and not within two years after the payment of the charges.

United States v. Director General, 80 I. C. C. 143, 150, 151.

Thus, the Commission held that the restriction first inserted by the Transportation Act Amendment, of the time within which to file claims was retrospective in its operation and applied to the Federal Control claims of the Government *as a shipper.*

The language of the first sentence of Paragraph 3, and of the second sentence of Paragraph 3 is almost identical and it is obvious that *both sentences must be given retrospective application.*

~~Section 424 of the Transportation Act provides:~~

> "The second paragraph of Section 16 of the Interstate Commerce Act is hereby amended by inserting "(2)" at the beginning of such paragraph and striking out the last sentence thereof, and inserting in lieu thereof the following as a new paragraph * * * ."

An examination of the statute discloses that the portions stricken for the purpose of this amendment

carried the proviso "that claims accrued prior to the passage of this act may be presented within one year."

34 Stat. L., 590.

So the Congress deliberately struck a sentence from Section 16 which, by its terms, was not retrospective and inserted in lieu thereof Paragraph 3 as it now exists. One is therefore forced to the conclusion that the Congress made Section 16(3) in its entirety retrospective and that it did so deliberately and with full knowledge of its purpose.

**Point 3**

THE DIRECTOR GENERAL IS BOUND BY THE LIMITATION IN SECTION 16(3) OF THE ACT.

We have already seen that the Government as a shipper during Federal Control is bound by Section 16(3) the same as any other shipper and must file its complaints for the recovery of damages in compliance therewith.

United States v. Director General, supra, 80 I. C. C. 143, 150, 151.

The Commission's decision is diametrically opposed to that of the Circuit Court of Appeals in this case. Certainly if the Government *as a shipper* is bound by that part of Paragraph 3 of Section 16 applicable to shippers, as a carrier it is also bound by that part of Paragraph 3 of Section 16 applicable to carriers. The arguments supporting the interpretation of the word "carriers" in Paragraph 3 as

including the Director General are infinitely stronger than those upholding the Commission's decision. Let us examine the opinion of the Honorable Circuit Court of Appeals.

A. REASONING OF THE CIRCUIT COURT OF APPEALS—

In its opinion the Circuit Court of Appeals held that in the control and operation of railways the Government was exercising a sovereign power.

287 Fed. 522, 523, 524.

An examination of the cases cited discloses that the Court overlooked, or did not give sufficient consideration to Section 10 of the Federal Control Act.

Northern Pacific Ry. Co. v. N. Dak., 250 U. S. 135, was decided on the ground that the United States was not a necessary party.

Northern Pacific Ry. Co. v. N. Dak., 250 U. S. 135.

In Missouri Pacific v. Ault, 256 U. S. 554, the Supreme Court decided that the Government was operating the carriers but that the usual immunity of the sovereign from legal liability was not to prevent the enforcement of liabilities ordinarily incident to the operation of carriers.

Missouri Pacific v. Ault, 256 U. S. 554.

North Carolina R. R. Co. v. Lee, 67 L. Ed., page 7, did not involve the sovereignty, but was decided under Section 10 of the Federal Control Act. The effect of the decision was that a lessor railroad com-

pany can not, while under Federal Control, be subjected to liability for personal injury sustained during Federal Control.

North Carolina R. R. Co. v. Lee, 67 L. Ed. 1.

In re Tidewater Coal Exchange, 280 Fed. 648; In re Hibner Oil Co., 264 Fed. 667; Davis v. Pullen, 277 Fed. 650; hold that a debt rising out of Governmental Control is a debt due the United States. It will be observed, however, that every one of these cases arose in bankruptcy, and that the decision had no relation to the Governmental capacity of the Director General, but that they were all based on Section 64(b) of the Bankruptcy Act, and Section 3466 of the Revised Statutes. Both of which established the priority of the United States in bankruptcy and insolvency matters.

In re Tidewater Coal Exchange, 280 Fed. 648.
In re Hibner Oil Co., 264 Fed. 667.
Davis v. Pullen, 277 Fed. 650.

The Court of Appeals concluded that under established rules of statutory construction, such claims are not restricted by the limitations in Section 16(3) unless it "clearly appears that such inclusion was intended." (Page 523).

The Court argues that Section 16(3) does not mention the United States or its representative the Director General, and concludes that though the word "carriers" might include the Director General, as a matter of fact "it might very well mean only the Transportation Companies which were about to resume control and operation of their properties." (Page 524).

Further on the Court said:

> "It is also noteworthy that another section of the transportation act (Section 206) deals specifically with limitations as to claims and actions brought *against* the Director General."
>
> "In short, even if the construction of the Act did not lead strongly to the conclusion that the government was not included within the terms 'carriers' as used in Section 424, yet it certainly is true that such conclusion is doubtful. Not being clear, the rule of construction above stated takes control and forces the conclusion that the statute does not limit such suits as this." (Page 524).

B. THE EFFECT OF FAILURE TO INCLUDE LIMITATION IN SECTION 206—

Section 206 relates to the grievances of the shippers against the Federal Control carriers and *not* to the grievances of the Director General against the *shippers*, and the limitations set forth in Section 206 are restrictions only on the causes of action of shippers and other persons seeking relief *against* the Director General. Section 206 applies only to Federal control. *Section* 424 *applies to conditions before, during and after Federal Control.* If the limitation regarding the right to file suit had been placed as a subparagraph of Section 206 instead of in Section 424, the claims of the corporate carriers, prior, during, and subsequent to Federal Control would not be restricted (except by varying state statutes of limitation) and we would have the anomalous situation of a Federal limitation on suits by the Director General for freight charges (state and

interstate) and no Federal limitation on suits by the carriers *not under Federal control,* on their charges accruing before, during and after Federal Control.

**Point 4**

THE GOVERNMENT STOOD IN THE SHOES OF THE "CARRIERS" DURING FEDERAL CONTROL AND WAS INCLUDED IN THE WORD "CARRIERS" IN SECTION 16(3).

Our chief disagreement with the Court's opinion in this case is in the premise that Federal control claims of the Director General are governmental claims and protected by the sovereignty. When the Government was operating the railroads, it operated them subject (with certain exceptions) to the limitations and disabilities of any other carrier. Section 10 of the Federal Control Act provides:

> "Section 10. That carriers while under Federal Control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except insofar as may be inconsistent with the provisions of this Act or any other Act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government."

Moreover, Section 10 subjects the Federal control rates to the various tests prescribed in the Act to regulate commerce—

> "* * * The commission may make such findings and orders as are authorized in the act to regulate commerce *as amended* and such findings and orders shall be enforced as provided in said Act."
>
> Section 10 of the Federal Control Act.

There were twenty-nine days in February, 1920. The Transportation Act was approved February 28th. By the terms of the Act, Federal Control did not terminate until 12:01 o'clock, a.m., on the first day of March, 1920. The Transportation Act did not repeal the Federal Control Act, so, at any rate, there was one day of Federal Control under the Transportation Act. There was also one day during which carriers under Federal Control were subject to the Act to regulate commerce *as amended* by the Transportation Act.

The Supreme Court has said:

> "The Government was to operate the carriers, *but the usual immunity of the sovereign from legal liability was not to prevent the enforcement of liabilities ordinarily incident to the operation of carriers.* The situation was analogous to that which would exist if there were a general receivership of each transportation system * * *. The courts were to go on entertaining suits and entering judgments under existing laws, but the property in the hands of the President for war purposes was not to be disturbed. With that exception the substantial

legal rights of persons having dealings with the carriers were not to be effected by the change of control. * * * The systems are regarded much as ships are regarded in admiralty, they are dealt with as active responsible parties, answerable for their own wrongs."

Mo. Pac. v. Ault, 256 U. S. 554, 559, 560.

Speaking of the effect of Sections 10 and 15 of the Federal Control Act the same Court said:

"By these provisions the United States submitted itself to the various laws, state and federal, which prescribed how the duty of a common carrier or railroad should be performed and what should be the remedy for failure to perform." (Page 563).

"The plain purpose of the above provision (Section 10, Federal Control Act) was to preserve to the General Public the *rights and remedies* against common carriers which it enjoyed at the time the railroads were taken over by the President * * *."

Mo. Pac. v. Ault, 256 U. S. 554, 559, 563.

All through the Federal Control Act the railroads under Federal Control are referred to as the "carrier" or "carriers."

In the Ault Case the Supreme Court construed the words "carriers while under Federal Control" in Section 10, as follows:

"Here the term 'carriers' was used as it is understood in common speech; meaning the transportation systems as distinguished from the corporations owning or operating them. Congress had in Section 1 declared that such was its meaning."

Mo. Pac. v. Ault, 256 U. S. 554, 559, 560.

The words "carrier" and "carriers" in the Interstate Commerce Act also refer to the transportation system as distinguished from the owners thereof.

**Point 5**

**A Receiver Is a Carrier Under the Interstate Commerce Act**

It can no longer be doubted that "receiver" is a "carrier" under the Interstate Commerce Act.

United States v. Ramsey, 197 Fed. 144; 42 L. R. A. (N. S.) 1031, 1035.

United States v. Nickson, et al, 235 U. S. 231, 233, 234.

Rutherford v. Union Pac. R. Co., 254 Fed. 880, 881.

Evans v. Union Pac. R. Co., 6 I. C. C. 520, 527.

Since the Federal Control rates were subjected to the limitations of the Interstate Commerce Act it is obvious that the words "carrier" and "carriers" in the latter Act must also apply to the transportation systems as distinguished from the owners or operators thereof, otherwise practically all of said act would be irrelevant, so far as Federal control rights, duties and liabilties are concerned and we could not uphold the cases construing "carriers" to comprehend "receivers." We know, as a matter of fact, that the Federal control charges were tested under the various sections of the Interstate Commerce Act, and where a section of that act is amended and the word "carrier" or "carriers" is

used in the sense of transportation system rather than the owner thereof, it is obvious that the director general must be comprehended within such amendment. In fact the fourth paragraph of Section 10 of the Federal Control Act expressly states that the

> "* * * commission may make such findings and orders as are authorized by the act to regulate commerce *as amended*, and said findings and orders shall be enforced as provided in said act."
>
> Section 10, Federal Control Act.

This shows undoubtedly that the powers of the Director General were to be restricted or enlarged by any applicable amendments present and prospective, of the Interstate Commerce Act.

**Point 6**

THE EXCLUSION OF THE DIRECTOR GENERAL FROM CERTAIN OBLIGATIONS IN THE INTERSTATE COMMERCE ACT SHOWS THAT HE WAS SUBJECTED TO ALL OTHER RIGHTS AND DUTIES IN SAID ACT INCLUDING THE RESTRICTIONS IN SECTION 16(3).

Where the rates, fares, and charges of the Director General were not to be subjected to the Interstate Commerce Act as amended, or were not to be governed by the provisions in said Act, the Federal Control Act expressly so provided.

Thus, in the fourth paragraph of Section 10, after the Commission was authorized in express language to make such findings and orders as are authorized by the act to regulate commerce *as amended*, it was provided that the

> "* * * Commission in determining the justness and reasonableness of any rate, fare, charge, classification, regulation or practice shall take into consideration * * * "

a finding and certificate, if any, by the President that such rate, fare, classification, etc., is necessary to increase railway operating revenues.

Again, in the second paragraph of Section 10 (Federal Control Act) the power of the Commission, under Section 15 of the Interstate Commerce Act to suspend rates, classifications, etc., pending final determination, was abrogated during the period of Federal control, and though this power to suspend rates, etc., was not existent during the greater part of Federal control, yet the Supreme Court held that such power was restored by the Transportation Act, 1920, as to all Federal control rates, classifications, etc., becoming effective between February 28th, 1920, and March 1st, 1920, the date when Federal Control terminated under Section 200 of the Transportation Act.

> Director General v. The Viscose Co., 254 U. S. 498, 501, 502.

Could anything indicate more plainly the subjection of the Director General to the Interstate Commerce Act as amended? The Federal Control Act specified what sections need not be complied with. The Transportation Act removed one of the exceptions and instantly Federal Control charges and practices theretofore exempted became subject to the Interstate Commerce Act *as amended*.

## Point 7

SECTION 16(3) SHOULD BE CONSTRUED TO AVOID DISCRIMINATION AND ABSURDITY.

Many roads were not taken under Federal Control and a very considerable number (probably several hundred) of short line railroads were released from Federal control in June, 1918. All of these roads were parties to through routes and joint rates with Federal control roads. The number and importance of these classes of roads was so great and their interests so vital that Congress recognized their importance and equities in Sections 204 and 209 of the Transportation Act, 1920, where they were accorded substantially equal treatment with roads actually operated by the Director General.

All local and joint charges of these roads during the Federal control period are subject to Section 16 of the Interstate Commerce Act as amended by Section 434(3) of the Transportation Act, 1920. Such carriers must sue for their charges at least within three years following the approval of the Transportation Act, 1920, on February 28th, 1920.

Since these important classes of roads are limited by Section 16(3) is there any reason why Federal Control roads should not be similarly limited? Surely Congress did not intend one limitation law for the Federal Control roads and another for the non-Federal Control roads, Would this not be an unjust preference of the Federal Control roads in violation of the intent of Congress expressed in the

Federal Control Act, Interstate Commerce Act, and particularly in Section 201(e) of the Transportation Act, where Congress subjected the United States barge line vessels, etc., to the Interstate Commerce Act, the Shipping Act, and all other duties and liabilities of privately owned vessels?

Consider the difficulty and absurdity of exempting Federal Control roads from Section 16(3). The non-Federal Control roads maintained through routes and joint rates with Federal Control roads.

As to such shipments, would Section 16(3) be applied to some part of the through rate and a state statute of limitation to another part? If so, what part of a through rate would be barred by each statute? It seems to us that this demonstrates the utter absurdity of attempting to exempt Federal Control roads from Section 16(3). In construing this Section—

> "The courts must assume that Congress acted intelligently, and intended something other than absurdity by what was done."
>
> United States v. Southern Pac. Ry. Co., 230 Fed. 270, 275.

**Point 8**

THE TRANSPORTATION ACT ESTABLISHED NO NEW LIMITATION IN ARKANSAS.

Prior to the Transportation Act no limitation was prescribed for causes of action by a carrier for its charges. The Commerce Commission held that the

law of the State in which was located the Court in which the suit was brought on the order of reparation would control as to limitation.

Cattle Raisers Association v. C. B. & Q. R. Co., 10 I. C. C. 83, 100, 101, 102, 103, 104.

The Supreme Court of Arkansas has decided that the limitation applying to suits for the recovery of charges in that State is three years.

C. R. I. & P. R. Co. v. Lena Lbr. Co., 99 Ark. 105.

The Transportation Act therefore established no new rule in Arkansas. At any rate under Section 10 of the Federal Control Act the statute of limitation had been running during a year and seven months at the time the Transportation Act was approved, and as Section 10 was not repealed by the Transportation Act, the cause of action is barred under the State Statutes.

**Issue III**

THE DECISION OF THE HONORABLE CIRCUIT COURT OF APPEALS THAT JAMES C. DAVIS, DIRECTOR GENERAL, IN HIS CAPACITY AS FEDERAL AGENT, WAS THE PROPER PARTY PLAINTIFF WAS BASED ON AN ERRONEOUS CONSTRUCTION OF THE LAW.

Our position is that James C. Davis should have brought this suit, if at all, in his capacity as Director General of Railroads and not as Federal Agent. He has no authority to bring any suit in his capacity as Federal Agent.

The creature of a statute must look to the statute for his authority and is without authority unless it is conferred by the statute.

> "It is the general principle of interpretation that the mention of one thing implies the exclusion of another thing, expressio unis est exclusio alterius. The affirmative description of the case in which the jurisdiction may be exercised implies a negative on the exercise of such power in other cases."
>
> 25 R. C. L., 981, Para. 229.

The President, under authority of the Federal Control Act appointed the Director General of Railroads and vested him with the authority to operate the transportation systems, and that authority carried with it the right to institute and defend suits. It continued until the approval of the Transportation Act on February 28th, 1920. The President under authority of Sections 202 and 211 of the Transportation Act saw fit to continue James C. Davis as Director General of Railroads. He continued to hold that position with all the powers and privileges incident thereto except those specifically created in Section 206. Section 206(a) of the Transportation Act provides:

> "Sec. 206(a). Actions at law, suits in equity and proceedings in admiralty, based on causes of action arising out of the possession, use, or operation by the President (under the provisions of the Federal Control Act, or of the Act of August 29th, 1916), of such character as prior to Federal control could have been brought against such carrier, may, after the termination of Federal control, be brought

against an agent designated by the President for such purpose, which agent shall be designated by the President within thirty days after the passage of this Act. * * * "

The effect of this provision was to create an additional separate and distinct legal entity and the fact that James C. Davis is both Director General and Federal Agent under Section 206 does not authorize him to perform any function as Federal Agent which is not authorized by the Section creating the position.

It would hardly be said that the Director General in the face of Section 206 can now defend litigation. No more should it be said that the Director General can now bring suits. The Federal Agent has no more authority under Section 206 to bring a suit than one of the District Judges would have to try a case pending in the District Court while sitting as a member of the Circuit Court of Appeals.

Section 206 (d) provided that actions then pending should not abate at the termination of Federal control, but that they might be prosecuted to final judgment. However, it required that a Federal Agent, designated by the President, must be substituted for the defendant.

If there be no difference between the legal entities of the Director General of Railroads and the Agencies created by Paragraph (a) of Section 206, there certainly would be no reason for Paragraph (d).

The Interstate Commerce Commission on the 18th of March, 1920, by order, provided:

> "That in all proceedings before the Commission upon complaint praying for reparation for any cause set forth in subdivision (c) of said Section 206 * * * said Walker D. Hines, Director General of Railroads, as Agent, be and he is hereby substituted as defendant in place of himself as Director General of Railroads."
>
> Watkins on Shippers and Carriers, Vol. 2, p. 1380.

In Hines, Director General, v. Struthers Furnace Co., 271 Fed. 792, District Judge Westenhaver said:

> "Section 211 provides, in substance, that all powers and duties conferred or imposed upon the President by the preceding sections of the Act, except the designation of the agent under Section 206, may be executed by him through such agency or agencies as he may determine. Pursuant to this power, a new Director General has been appointed, clothed with all the powers and duties conferred or imposed upon the President under that Act, except the powers and duties specially reserved by Section 206. This last-named section provides for the appointment of a special agent, to be known as Litigation Agent, against whom all actions at law, suits in equity, and proceedings in admiralty, based on causes of action arising out of the possession, use, or operation of any system of transportation, shall be brought and prosecuted. Rights of action in favor of the United States or the Director General are not among those mentioned in Section 206. As regards actions or suits to recover on causes of action accruing to the United States during the period of Federal con-

> trol, the situation remains precisely as it was under the Act of March 21, 1918. * * *"
> Hines, Director General of Railroads, v. Struthers Furnace Co., 271 Fed. 792.

Philadelphia & Reading Ry. Co. et al. v. Laurel Coal Mining Company, 276 Fed. 1019, was an action by the Philadelphia & Reading Ry. Co., and John Barton Payne, Director General, *and Agent* for the Philadelphia & Reading Ry. Co., against the Laurel Coal Mining Company. A demurrer was filed for misjoinder of plaintiffs. District Judge Thompson sustained the demurrer and said:

> "Upon a claim accruing to the United States, the Director General, appointed pursuant to Section 211 of the Transportation Act of February 25, 1920 (41 Stat. L. 469), is, under the practice followed and universally approved by the courts under the Federal Control Act of 1918, the proper party plaintiff, as is clearly demonstrated in the opinion of Judge Westenhaver of the Northern District of Ohio in the case of Hines v. Struthers Furnace Co. (D. C.), 271 Fed. 792, and without further discussion or comment I concur in Judge Westenhaver's ruling. * * *"
> Philadelphia & Reading Ry. Co. v. Laurel Coal Mining Co., 276 Fed. 1019.

## CONCLUSION

In conclusion, we insist:

(a) That the Congress, as it indicated in Section 202 of the Transportation Act, conceived that the Federal Control should be wound up as expeditiously as possible. And, with that thought, it created by Section 206 a limitation for claims against Federal Control; and likewise, by Section 424, a lim-

itation for claims by the Federal Control (as well as of other carriers subject to the Commerce Act) for its charges.

(b) That the Honorable Circuit Court of Appeals erred in holding Section 16 (3) does not apply to suits by the Director General.

(c) That the Honorable Circuit Court of Appeals erred in holding that James C. Davis had any legal authority to institute this suit in his capacity as Federal Agent.

(d) That the judgment of the Honorable Circuit Court of Appeals should be reversed and the suit dismissed.

Respectfully submitted,

C. A. CUNNINGHAM,
Z. B. HARRISON,
Counsel for Petitioner.

No. 517.

# In the Supreme Court of the United States.

OCTOBER TERM, 1923.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT, RESPONDENT,

*v.*

E. I. DUPONT DE NEMOURS & COMPANY, PETITIONER.

## BRIEF FOR RESPONDENT.

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*Attorneys for Respondent.*

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1924

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# In the Supreme Court of the United States.

OCTOBER TERM 1923.

E. I. DUPONT DE NEMOURS & COMPANY, petitioners,
*v.*
JAMES C. DAVIS, DIRECTOR GENERAL OF Railroads, as agent, respondent.
} No. 517.

## BRIEF FOR RESPONDENT.

### STATEMENT OF THE CASE.

Respondent, James C. Davis, Director General of Railroads, and Agent of the President, under the Transportation Act 1920, for the purpose of winding up the affairs of the United States Railroad Administration, brought suit against petitioner in the United States District Court, Eastern District of Arkansas, to collect demurrage in the sum of Three Thousand Two Hundred Seventy-Eight Dollars ($3,278), alleged to have accrued, and to be due from petitioner herein, on shipment over line of the Chicago, Rock Island & Pacific Railroad, delivered at Little Rock, Arkansas, during May, June, and July, 1918, while such railroad was being operated by the Government during the period of Federal Control of Railroads.

The usual and proper jurisdictional facts are set forth in the complaint.

The petitioner herein demurred to the complaint on two grounds: (1) that the cause of action was barred by the statute of limitations; and (2) that respondent herein was without authority to bring suit.

Such demurrer was sustained and judgment was entered dismissing suit. Thereafter, and in due time, the case was taken by respondent herein to the Circuit Court of Appeals, Eighth Circuit, on writ of error, where the judgment of the District Court was reversed, the Circuit Court of Appeals expressly holding that the cause of action was not barred by the statute of limitations and that the respondent herein had authority to bring and prosecute the action. (287 Federal Reporter 522.) The statute of limitations relied upon by petitioner herein is that enacted as a part of section 424, Transportation Act 1920 (41 Stat. 492), providing a limitation of 3 years for bringing suits by carriers, subject to the Interstate Commerce Act, to recover transportation charges. (See opinion of Court, page 39, transcript of record.) A rehearing was denied by the Circuit Court of Appeals, and, on application of petitioner, a writ of certiorari has been granted by this court. Section 424 of the Transportation Act 1920 is as follows:

> Sec. 424. The second paragraph of section 16 of the Interstate Commerce Act is hereby amended by inserting "(2)" at the beginning of such paragraph, and by striking out the last

sentence thereof and "(3)" *All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.* All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for recovery of charges in respect of the same service, in which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. A petition for the enforcement of an order for the payment of money shall be filed in the district court or State court within one year from the date of the order, and not after.

We have quoted the entire section for convenient reference and to challenge attention to the fact at the outset that the section is an amendment of Section 16 of the Interstate Commerce Act and is in Title IV of the Transportation Act, which includes only "Amendments to Interstate Commerce Act," and is not in the portion of the Transportation Act having to do with the termination of Federal control, or the winding up of the affairs of the United States Railroad Administration. For convenient reference

we italicize the portion of the section containing the three-year limitation relied upon by petitioner. The only questions presented in this court are (1) applicability of such statute of limitations to suits brought by the government for its charges accruing during Federal control; and (2) the right of respondent herein to maintain this suit in behalf of the government. We will consider such questions in the order named.

## ARGUMENT.

### I.

**The provision of section 424 Transportation Act 1920, limiting the time within which carriers subject to the Interstate Commerce Act may commence suits to collect their charges, has no application to suits brought in behalf of the United States to recover its charges accruing in favor of the Government in the operation of the railroads during the period of Federal control.**

(A) *The railroads during Federal control were operated by the Government, and charges for transportation and revenues accruing in such operation were the property of the United States.*

The foregoing proposition was bitterly contested by shippers and others having claims growing out of the operation of the railroads during Federal control, but has now been definitely settled. We call attention thereto as a matter of historical interest rather than because of a conviction that this court requires argument thereon. Petitioner's attitude in this case, constitutes the last stand of those who have from the beginning sought to impose upon

the Government's operation of the railroads, as a means of successful prosecution of the Great War, attributes, restrictions, and handicaps of private ownership and private operation. Extended discussion of this question would be inexcusable; but we may be pardoned for citing the following authorities and quoting briefly from some of them:

Section 12 of the Federal Control Act;

*Northern Pacific Railway Co.* v. *North Dakota*, 250 U. S. 135;

*Missouri Pacific Railway Co.* v. *Ault*, 256 U. S. 554;

*Dahn* v. *Davis*, 258 U. S. 421;

*In re Hibner Oil Company*, 246 Federal 667 C. C. A., Seventh Circuit;

*Davis* v. *Pullen*, 277 Fed. 650, C. C. A., First Circuit;

*In re Tidewater Coal Exchange*, 280 Fed. 648, C. C. A., Second Circuit.

Section 12 of the Federal Control Act provides:

> The moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States.

The *North Dakota case, supra*, involved rates promulgated by the Director General of Railroads, which because held to be the action of the Government, superseded rates, intra and interstate, theretofore in effect.

The *Ault case, supra*, involved a suit for wages and penalty authorized by an Arkansas statute for failure to pay wages due an employee within a specific time.

Because the railroad was at that time being operated by the Government and the Government was in fact the defendant, the penalty was held inapplicable, since the Government had not consented to be liable for a penalty.

In the *Dahn case, supra*, a railway postal clerk was suing for injuries received in the operation of a railroad under Federal control. He accepted compensation, under the Federal Employees' Compensation Act, and thereafter sought to recover damages for his injuries. It was held that, having been compensated by the Government by the allowance of compensation, he was not entitled to a second recovery from the Government by the way of damages.

Each of the foregoing cases turns on the question that the Government of the United States was the responsible party in operating the railroads, and that a suit against the Director General in a cause of action growing out of such operation is a suit against the Government. In *Hibner Oil Company, Pullen and Tidewater Coal Exchange cases, supra*, the applicability of the provision of Section 3466 Revised Statutes (Compiled Statutes, Section 6372) giving the Government priority as between creditors of insolvent debtors was involved. Transportation charges accruing during Federal control were involved in each case and in each instance it was held that the indebtedness involved was due the United States and the Director General was entitled to priority under the section of the statute referred to.

*In re Tidewater Coal Exchange, supra,* it was said:

> That the Director General represents the United States in matters growing out of and connected with the operation of the railroads during the period of Federal control, was decided by this court in *Globe & Rutgers Fire Insurance Co.* v. *Hines,* 273 Fed. 774. He was during the period involved a part of the Government of the United States, and as such entitled to the rights and privileges and immunities inherent in the sovereignty. *Missouri Pacific Railroad* v. *Ault,* 256 U. S. 554, 41 Sup. Ct. 593. * * * The United States in operating the railroads during the period of Federal control, was engaged in the performance of a governmental function and was not carrying on a merely private commercial enterprise. * * * The Director General in claiming on behalf of the United States the moneys arising out of the operation of the railroads, is seeking to recover public money and he is acting in a governmental capacity as much as though the money to be recovered were taxes. See *Chesapeake & Delaware Canal Co.* v. *United States,* 250 U. S. 123, 126, 127; 39 Sup. Ct. 407; 63 L. Ed. 889.

This suit, therefore, although the Director General is plaintiff, is a suit on behalf of and by the United States.

(B) *Statutes of Limitation do not apply to the Government unless the intent of Congress to such effect is clearly manifested.*

The foregoing doctrine is established by a long unbroken line of decisions of this court which includes the following:

*Gibson* v. *Chouteau*, 13 Wallace 92;
*U. S.* v. *Thompson*, 98 U. S. 486;
*Fink* v. *O'Neill*, 106 U. S. 272–281;
*U. S.* v. *Nashville, etc., Railway*, 118 U. S. 120;
*U. S.* v. *American Bell Telephone Co.*, 167 U. S. 265;
*Hays* v. *U. S.*, 175 U. S. 248–260.

In *Gibson* v. *Chouteau, supra*, it is said:

> It is a matter of common knowledge that statutes of limitation do not run against the State. That no laches can be imputed to the King, and that no time can bar his rights, was the maxim of the common law, and was founded on the principle of public policy, that as he was occupied with the cares of government he ought not to suffer from the negligence of his officers and servants. The principle is applicable to all governments, which must necessarily act through numerous agents, and is essential to a preservation of the interests and property of the public. It is upon this principle that in this country the statutes of a State prescribing periods within which rights must be prosecuted are not held to embrace the State itself, unless it is expressly designated or the mischiefs to be remedied are of such a nature that it must necessarily be included.

The foregoing language is of particular significance in respect to the Government in winding up the affairs of the Railroad Administration, which we think the court will judicially notice involved the vast number

of unpaid charges accumulating on 250,000 miles of railroad during a period of 26 months which must be collected under the direction of the President through a vast number of agents scattered all over the United States connected with the railroads involved in whose possession the records showing such charges necessarily were. Such uncollected charges were necessarily almost countless in number and no central organization the President could devise could have access to such records scattered all over the United States, but must depend in a very large measure upon the diligence and good faith of the agents and employees of the railway companies in making collection. The reasons operating generally in favor of not making statutes of limitation applicable to the Government, apply in the situation here presented in a degree multiplied many times as compared with the ordinary governmental situation. In *United States* v. *Nashville, etc., Railroad Co., supra*, this court said:

> It is settled beyond doubt or controversy upon the great principle of public policy applicable to all Governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided—that the United States asserting rights vested in them as a sovereign government, are not bound by any statute of limitations unless Congress has *clearly manifested* its intention that they should be so bound.

It follows, therefore, that the limitation under consideration can have no application to the cause of

action sued on in this case, unless Congress has *clearly manifested* its intention that such limitation should be applicable, because such cause of action is in favor of the United States and the suit is by and in behalf of the United States.

(C) *The statute of limitation relied on by Petitioner herein can not be held applicable to the cause of action sued on because Congress has not manifested an intention that such statute should apply to suits to recover charges accruing in behalf of the Government in the operation of the railroads during Federal control.*

The Transportation Act 1920 was approved and became a law on February 28, 1920, the last day, but one, of Federal control. Only a portion of its provisions had any application to Federal control of railroads or to liquidating the affairs of the Railroad Administration. The Act was entitled "An Act to provide for the termination of the Federal control of railroads and systems of transportation; to provide for settlement of disputes between carriers and their employees; to further amend an Act entitled 'An Act to regulate commerce,' approved February 4, 1887, and for other purposes." The Act is divided into four grand subdivisions or titles, designated as follows:

Title I. "Definitions."

Title II. "Termination of Federal control."

Title III. "Disputes between carriers and their employees, and subordinate officials."

Title IV. "Amendment to Interstate Commerce Act."

The statute of limitations here involved is in Title IV, and is added to the Interstate Commerce Act by way of amendment. It applies to "carriers subject to the Act." Does such language manifest an intention on the part of Congress that such description should include the Government? If inclined to the view that such language does include the Government, we ask, Is such intention "*clearly manifested*"? We contend that such intent is not only not *clearly manifested*, but on the contrary it appears that Congress had in mind and intended that the limitation should affect and apply only to the railway companies whose properties were about to be returned to them by virtue of Title II of the Act, and the Proclamation of the President terminating Federal control, promulgated December 24, 1919, and who resumed the operation of their properties as common carriers at midnight of the day following the approval and effective date of the Transportation Act. We think Congress in separating and dividing the Act into the several titles above suggested, treating a separate and distinct subject in each, clearly manifested its intention that the provision in one title should not apply to the matters treated in a different title, unless of a character and so related as to compel a contrary conclusion. Such contrary conclusion should not be adopted without compelling reasons, where so settled a policy and principle of the law, as that relieving the sovereign from the operation of statutes of limitation, will thereby be circumvented or abrogated.

In enacting Title II of the Act, terminating Federal control, Congress was dealing with a situation then existing, and with the winding up and adjusting of the multitudinous matters arising out of or connected therewith.

In enacting Title III Congress was dealing with the future of the carriers about to be restored to the possession and operation of their properties, and for the protection of the public, the carriers, and their employees from the calamitous results usually attending disputes as to wages, terms of employment, and working conditions too frequently resulting in strikes, walkouts, boycotts, and other phases of industrial warfare. Confessedly the provisions contained in this Title could not apply to the Railway Administration, notwithstanding such Title defines "carrier" as "any carrier by railroad subject to the Interstate Commerce Act."

In enacting Title IV Congress was also dealing with the future. All of the provisions in said title constitute amendments to the Interstate Commerce Act and have no relation to Federal control or the liquidation of affairs thereof. All provisions of said Title are in the way of additions to, or modifications of, a comprehensive statute, forming a complete scheme of regulating future conduct of carriers, subject to the regulatory provisions of the Act. Petitioner is assuming a real burden in seeking to show that Congress in so dealing with the future of carriers about to resume activity as such, intended, in fixing a time within which they should bring suit for their

charges, to abrogate the wholesome and generally applicable doctrine that statutes of limitation do not apply to the sovereign and that Congress intended that the President in carrying out its mandate to wind up and settle the affairs of the Railroad Administration should complete such gigantic task within three years, or in the event of failure of debtors to make payment of such charges within such time, flood the courts of the country with countless suits involving vast amounts of otherwise unnecessary and useless expense, both to the Government, the debtors, and the public, and thus obstruct the administration of justice in the ordinary and usual litigation pending in the courts.

Little, if any, aid in ascertaining the intention of Congress may be derived from the use of the word "carrier" in the Act, although we think great weight should be given to the words "carriers subject to the Act." From the end of Federal control the Director General—Government—was not a carrier subject to the Act, and during Federal control was subject to the Act only in a very limited degree. It was in part because of restrictions in the Interstate Commerce Act, and other Acts of Congress, binding upon the railway companies that the Government took possession of and operated the railroads, the Government not being subject to such restrictions. The words "carriers subject to the Act" apply with full effect to all activities of the railway companies, and could apply to the Director General or Government to only a very limited extent and for

one day only after the law became effective. It is not to be assumed that Congress undertook thus to overturn and abrogate the usual doctrine of immunity of the sovereign from the operation of statutes of limitation. The word "carrier" is used in the Federal Control Act in a variety of ways. In Sections 1, 2, 3, 4, 5, and 7 it is used to designate the railway companies, owners of the properties taken over by the Government; while in Sections 10 and 12 of the Act, such term is obviously used to designate the railroad property or system of transporation taken over by the Government; as, for example, in Section 12 of the Act, it is stated:

> That moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States.

Obviously "the carriers" as here used means the property or systems of transportation from the operation of which the moneys or other property are derived. The term "carrier" is frequently used in the Transportation Act. In Sections 203, 204, 205, 206, 207, 209, and 210, all in Title II of the Act, the term is used, in each instance, to designate the railway companies. We are unable to discover any instance in either Title of the Act in which the term is used to designate the Director General, the Government, or any system of transportation while under Federal control. The use of the term "carrier" in the Act does not therefore aid petitioner in the contention that Congress intended that suits by the

Director General to recover charges due the Government would be barred if not commenced within three years. We must therefore look to other features of the Act and give consideration to other pertinent matters in arriving at the intention or lack of intention of Congress in the premises.

In determining whether the statute of limitation here involved is applicable to causes of action accruing in favor of the Government during Federal Control of Railroads, the history, purpose, and various features of the Transportation Act should, we think, be considered.

The railroads of the country had been taken possession of by the Government as a war measure, and had been operated on the Government's account for more than two years. Increases in rates for transportation had not kept pace with increasing costs of operation, and very many of the railroads were not making operating expenses, and few, if any, could so operate as to furnish any substantial compensation to their owners. Additions and betterments made by the Government had not been paid for, and the matter of financing same and the other operations of the railroads on being relinquished to their owners was a very serious problem, both to such owners and to the general public. The President had, on December 24, 1919, issued his Proclamation relinquishing all railroads and systems of transportation under Federal control to their owners, effective March 1, 1920, at 12.01 o'clock a. m. In enacting the Transporta-

tion Act Congress undertook to make provision for several things. In Title II provision is made for (1) termination of Federal control; (2) liquidating and adjusting all matters growing out of Federal control and operation of railroads, including claims for compensation made by the owners thereof, claims of third parties growing out of operation, and collection of claims due the Government growing out of such operation, as well as disposition of the assets acquired by the Government as a result of such Federal control and operation; (3) to make provision for sustaining and protecting the credit and solvency of the carriers during the transition period until such time as the Interstate Commerce Commission and other governmental agencies could so revise rates for transportation as to permit of the carriers earning an income that would make further Government aid unnecessary. In this connection, provision was made for reimbursing certain carriers for deficits resulting during the Federal control period, while the railroads of such carriers were not being federally operated (Section 204). Provision was also made for guaranteeing to each carrier engaged in general transportation for a period of six months immediately following the termination of Federal control a return equal to that enjoyed during the three-year test period referred to in the Federal Control Act (Section 209). Provision was made for retaining in effect the existing rates and charges for a period of six months from the termination of Federal control (Section 208). Provision was made for loans to carriers during the two-

year period following the termination of Federal control (Section 210). There are other features of Title II, but all relate to the termination of Federal control, the winding up of the affairs of the Railroad Administration, and the tiding of the carriers over the transition period following the end of Federal control. This portion of the Act is distinct and separate from the portions contained in Titles III and IV, which have to do with the regulations of the carriers in the future. Title III creates a Railroad Labor Board to adjust disputes between the carriers and their employees, and clearly looks solely to the future. Such provisions have nothing to do with Federal control, or the termination thereof, or the winding up of the affairs thereof. Title IV contains amendments to the Interstate Commerce Act, and also looks to the future. It provides for the future regulation of the carriers. None of the provisions in said Title have to do with Federal control or the liquidation of the affairs of the Government growing out of Federal control. Aside from the considerations already suggested, it would seem that the statute of limitations here involved was not intended by Congress to apply to the President in collecting the assets of the Government in winding up the affairs of the Railroad Administration. In Section 202 of the Transportation Act, which is included in Title II, is contained the mandate of Congress to the President. Such section provides as follows:

> The President shall, *as soon as practicable* after the termination of Federal control, ad-

> just, settle, liquidate, and wind up all matters including compensation, and all questions and disputes of whatsoever nature, arising out of and incident to Federal control.

The President is directed so to do "*as soon as practicable after the termination of Federal control.*" No time limit within which such thing shall be accomplished was suggested other than "as soon as practicable." The provisions of Title II are complete in themselves and as suggested include an entirely different purpose from that contained in Title IV, which contains the limitation in question. As has already been suggested, the term "carriers" was used many times in the Transportation Act, but in no instance was the term used except to indicate the corporations owning the systems of transportation. Nowhere in Title II, or any other portion of the act, is the President, the Government, or the Railroad Administration referred to as a "carrier." In harmony with the President's Proclamation relinquishing the systems of transportation under Federal control to their owners, the Transportation Act terminated Federal control on March 1, 1920, at 12.01 a. m. The act was approved by the President and became effective February 28, 1920, practically coincident with the end of Federal control. The President, in the operation of the railroads, was not a carrier after 12.01 a. m. March 1, 1920. The amendments to the Interstate Commerce Act contained in Title IV of the Transportation Act never applied to the President or to the Government as a carrier. It

can hardly be conceived that Congress intended that the President or the Government in winding up the affairs of the Railroad Administration should be regarded or considered during such time as a "carrier subject to this act." This would be true, we think, independent of the doctrine which requires a strict construction of legislation "in derogation of the public right." *U. S.* v. *Railway*, 247 U. S. 210, 313. In the case of *U. S.* v. *Whited & Wheless*, 246 U. S. 552, 561, was involved construction of a statute limiting the time within which the Government could bring a suit to vacate a patent. It was held that such statute did not limit the time within which the Government could bring a suit for deceit in procuring the issuance of the patent. The statute was not to be construed any broader than its specific terms. In announcing the views of the court, the following language was used:

> Fundamental to the interpretation of the statute which the answering of the question renders necessary, lies the rule of law settled "as a great principle of public policy," that the "United States, asserting rights vested in them as a sovereign Government, are not bound by any statute of limitations, unless Congress has clearly manifested its intention that they shall be so bound." (*U. S.* v. *Nashville, Chattanooga & St. Louis Ry.*, 118 U. S. 120, 125), and also the fact that this principle has been accepted by this court as requiring not a liberal, but a restrictive, a strict construction of such statutes, when it

has been urged to apply them to bar the rights of the Government.

When this doctrine is applied to the situation here presented, there would appear to be no ground for contending that Congress intended to require the President in winding up the affairs of Federal control, to complete the collection of all transportation charges within three years, or begin suit within such time to recover all unpaid charges. The magnitude of the task imposed upon the President in Section 202 of the act, precludes any such conclusion. The operation of approximately 250,000 miles of railroad, belonging to several hundred separate corporations for a period of 26 months was involved. The railroads had been operated in large measure as a single system. The period of operation was one of stress, involving the prosecution of a great war and the transition period therefrom to a peace basis was a period of unusual and extraordinary reconstruction. Liquidation involved dealing with each unit—unscrambling this vast system of transportation—a process that has been aptly characterized as the greatest liquidation in the history of the world. The transportation charges remaining uncollected, great and small, were innumerable, beyond comprehension, and involving many thousands of individual claims on each of the hundreds of systems of transportation throughout the United States. This the court will take judicial notice of. Congress must be presumed to have known these facts, and unless extraordinary effort should be made, probably in-

volving an expense out of proportion to results obtainable, collection could not be made within three years from the time such burden was imposed upon the President. The imposing of such burden, to be completed within such time, is an entirely different proposition from requiring the individual carriers in the ordinary operation of their single systems of transportation, and in the ordinary conduct of their separate affairs, to collect such charges accruing in such operation within three years. In view of the magnitude of the task imposed on the President, we would not despair—were such course necessary—of showing that three years would be an unreasonably short time within which to complete collection of the outstanding charges at the end of Federal control, or within which to begin suit on all such charges unpaid at the end of three years. The vast number of such charges scattered over the entire United States, involving the hundreds of separate railway companies, upon the agents and employees of which the President was required to depend in very large measure in making collection, makes the imposing of such obligation on the President to be accomplished within such short space of time, utterly out of the question, and those who would charge Congress with so little regard for the interest of the Government as to make such requirement, assume a burden too great to be successfully borne. Congress expressly refrained from making a provision so stupid and so contrary to public interest. In order that the public interest would be subserved and protected, Congress

only required the President to perform the extraordinary duty imposed upon him "as soon as practicable."

In petition for writ of certiorari, page 3, paragraph 10, petitioner states:

> While this case itself involves a relatively small amount ($3,278), its determination will govern the settlement of many thousands of claims now pending against shippers. Innumerable additional claims will inevitably arise out of the thousands of bills of lading issued during Federal control. Many hundreds of thousands of dollars are involved in this aggregate.

We fully agree with the foregoing statement of petitioner, which is not an exaggeration, but rather a too conservative statement of the situation. "Many hundreds of thousands of dollars" are conceded to be involved. This means one or more millions of dollars, for petitioner would not exaggerate or use terms in an extravagant sense in seeking to induce this court to issue the extraordinary writ of certiorari. "Many" used in such an application must therefore be taken to mean more than ten, possibly a conservative use thereof in such connection should not be regarded as less than 10, multiplied several times. It is thus seen that the petitioner's contention, if adopted by this court, will mean a loss to the Government of "many hundred thousands of dollars," and shippers will be relieved of payment of a large amount of money justly due, merely because Congress placed upon the President an obligation too great to be

performed with the means available and under circumstances presented, within the time allotted. A construction which will cause such loss to the Government and furnish a shield which will protect shippers from paying honest debts in such large amoun t for services performed by the Government at great expense to itself and to the great advantage of such shippers, ought not to be adopted without compelling reasons, nor without finding in the legislation, and the facts and circumstances in the light of which such legislation is to be construed, manifestation of a clear intent on the part of Congress requiring such construction. We are unable to discover any basis for petitioner's contention, but on the contrary find clearly manifested the intention of Congress that the usual and wholesome rule exempting the Government from statutes of limitation should be applicable to the President in the performance of his duty in collecting the Government's outstanding charges.

The Court of Appeals, Ninth Judicial District of Ohio, in case of *Firestone Tire & Rubber Co.* v. *James C. Davis, Director General of Railroads*, etc., on January 7, 1924, in opinion not yet reported, but copy set out as an appendix to this brief, followed the opinion of the Circuit Court of Appeals of the Eighth Circuit in this case, holding the statute of limitations in question has no application to suits of this character.

Having the foregoing considerations in mind, we desire to consider briefly some of the contentions made in petitioner's brief. Petitioner bottoms his case almost entirely upon the features of the Federal

Control Act subjecting the Government in the operation of the railroads to liabilities to which their owners would have been subjected if operating their own properties. That many such liabilities were preserved to shippers and the public is, of course, conceded. But the Government was not placed in the "shoes" of the carriers as contended by petitioner. While subjecting itself to liability in many respects as a carrier, the Government did not surrender its sovereignty in other respects. Such surrender of sovereignty, which is merely a consent to be sued and to be liable in certain cases, will be strictly construed, and will not be extended beyond the fair construction of the language used in announcing such surrender of sovereignty, or consent to be sued. It will be noted that neither in the Federal Control Act, nor in the Transportation Act, is there any express surrender of any sovereignty in connection with the bringing or prosecuting of suits, or the conserving or protection of the Government's assets. On the contrary, the revenues accruing in the operation of the railroads were declared to be the property of the United States. The property acquired in the operation of the railroads was declared to be the property of the United States, and by Section 11 of the Act any violation of the provisions of the Federal Control Act, or any interference with or impeding of the possession, use, operation, or control of any railroad property taken over by the President, or the violation of any provision of any order or regulation made in pursuance of the Act, was declared to

be a misdemeanor and subjected the guilty party to a fine of not more than $5,000 or imprisonment for not more than two years, or both, each independent transaction constituting a separate and distinct offense. These were provisions based upon the sovereignty of the Government and not usual in respect to the same property when in the possession of and operated by the corporations owning same. In restoring such properties to their owners such provisions were not continued in effect as to such properties. The fact that in Section 10 of the Federal Control Act and in Section 206 of the Transportation Act the Government consented to be sued in certain cases does not, we think, tend to indicate that Congress intended that the limitation in Section 424 of the Transportation Act, involved in this suit, should apply to the President in performing the duties imposed in Section 202 of the Act in winding up, conserving, and collecting the assets of the Railroad Administration. It must be remembered that while the Government was operating the railroads there was no limitation imposed by Congress on the time suit should be commenced for collection of charges accruing to the Government in such operation. The fact that the Government, during Federal operation and for a limited time thereafter, subjected itself to the liabilities of a carrier does not aid petitioner in his contention that Congress in prescribing a limitation applicable to carriers subject to the Interstate Commerce Act intended such limitation to apply to the Government in collecting its

charges accrued while the Government was operating the railroads. We repeat, the surrender of sovereignty by the Government in one respect is no indication of an intent of Congress to surrender such sovereignty in an entirely different respect. It is one thing to consent to be liable as a carrier while operating the railroads and quite another thing to surrender immunity of the sovereign from statutes of limitation which would prevent the Government from recovering its charges growing out of such operation. The one bears no relation to the other. A willingness to be liable in the one instance does not evidence an intent that the Government shall be handicapped in the other. Petitioner cites *U. S.* v. *Director General*, 80 I. C. C. 143–150, in which the Interstate Commerce Commission held that a complaint by the United States through the War Department must be filed with the Commission within two years in order that the Commission may entertain the same. Such two-year limitation was in the Act before the beginning of Federal control. The Commission's decision did not go to the question of whether the United States in failing to file complaint within such time was barred thereby, but, on the contrary, the thought of the opinion of the Commission is that its jurisdiction depends on the claimant, whoever he be, filing his complaint within the time prescribed by the statute. The Commission is permitted to consider only claims filed within such time. The opinion does not involve the intention of Congress in enacting the limitation in question. Petitioner cites the

case of *Kansas City Southern Railway* v. *Wolf*, 261 U. S. 133, which involved a cause of action accruing to the corporation before the beginning of Federal control, and it was held that the two-year limitation in the Act for a long time prior to Federal control barred a recovery, suit having been brought after four years. Such case does not involve any amendment included in the Transportation Act, does not involve Federal control of railroads, and has no reference to the intent of Congress in enacting the limitation in controversy. The Court in its opinion followed *Phillips* v. *Grand Trunk Railway*, 236 U. S. 662–667, applying the same limitation and decided long before Federal control. Quoting from such opinion, the court said:

> Under such a statute the lapse of time not only bars the remedy, but destroys the liability whether the complaint is filed with the Commission or suit is brought in a court of competent jurisdiction.

The fact that such two-year limitation is in the same section of the Act, to which was added the limitation in question, by way of amendment, does not tend to indicate that Congress intended the limitation so added by amendment to be applicable to the President in winding up the affairs of the Railroad Administration and conserving and collecting its assets. Petitioner makes the point that Arkansas has a three-year limitation and that the cause of action herein should be held to be barred thereunder. We will not dignify such contention

further than to suggest that State legislatures are not ordinarily possessed of power to enact statutes of limitation which will be effective against the United States, and further that such claim was not made in the District Court, the Circuit Court of Appeals, the petition for certiorari, or the brief filed in support thereof in this court. The Circuit Court of Appeals did not consider such statute and this court did not grant the writ of certiorari to review a question not presented in the Circuit Court of Appeals. Petitioner did not rely on such State statute, either in the lower courts or in invoking jurisdiction of this court, and can not now rely thereon. Petitioner's remaining contentions, in so far as they deserve consideration, have been fully considered and we think shown to be without merit. We conclude the limitation in question has no application to the cause of action here involved, and that the Circuit Court of Appeals was right in so holding.

## II.

### Respondent had authority to commence and prosecute this suit.

Petitioner's contention that respondent does not have authority to bring and prosecute this action deserves, we think, the consideration given thereto by the Circuit Court of Appeals and no more. We have no quarrel with contention of petitioner that such suit should be brought by the Director General of Railroads. We contend, however, this suit was so brought and is being so prosecuted, and such

was the conclusion of the Circuit Court of Appeals. The use of the words "as Agent," following the words "James C. Davis, Director General of Railroads," does not change the fact that the suit is brought by "James C. Davis, Director General of Railroads," as plaintiff. It must be remembered that the Director General is an Agent of the President by virtue of his appointment as such, and while it was not necessary to recite in the title of the case, or in the body of the complaint, that he was suing as such Agent, such recital does not change the capacity in which he as Director General of Railroads brought this suit.

There is no occasion in this case to confuse the Agent of the President for winding up and adjusting the affairs of the Railroad Administration with the Agent to be appointed by the President under Section 206 of the Transportation Act, against whom suits might be brought. The complaint expressly negatives the idea that the plaintiff herein is suing as the Agent appointed by the President under Section 206, for the purpose of being sued. The plaintiff in his complaint alleges "that he is a citizen and resident of the State of New York, and that he has been duly appointed and commissioned by the President of the United States of America under and by virtue of an Act of Congress, known as the Transportation Act of 1920, Director General of Railroads, as Agent, for the purpose of winding up the affairs of the United States Railroad Administration."

It will be noted that the respondent in said complaint was proceeding as "Director General of Railroads, as Agent, for the purpose of *winding up* the affairs of the United States Railroad Administration," and not as the Agent appointed *to be sued* pursuant to Section 206 Transportation Act. Section 202 of the Transportation Act provides:

> The President shall, as soon as practicable after the termination of Federal control, adjust, settle, liquidate, and wind up all matters including compensation, and all questions and disputes of whatsoever nature arising out of or incident to Federal Control.

Section 211 of the Act provides that—

> All powers and duties conferred or imposed upon the President by the preceding section of this Act, except the designation of the Agent under Section 206, may be executed by him through such agency or agencies as he may determine.

It is thus seen that all power and duties imposed on the President by the Act, excepting the appointment of the Agent to be sued, as directed by Section 206, could be executed by the President "through such agency or agencies as he may determine." The President determined that the powers and duties imposed in Section 202 of the Act should be executed through an agent to be known as the "Director General of Railroads," and James C. Davis was appointed to act as such Agent and to execute such powers and duties. In acting as such Director General of Railroads, James C. Davis was acting as Agent

of the President, and while not necessary to expressly say he was suing as such agent, such was necessarily the fact, and the statement thereof can not change the capacity in which the act was performed. Expressing what was legally and necessarily implied, will not make bad what would have been good if left to implication. The objection of petitioner is not only hypercritical, but is entirely without merit and the Circuit Court of Appeals so treated it.

The Director General of Railroads has never contended that the Agent appointed by the President, pursuant to Section 206 of the Transportation Act, for the express purpose *of being sued*, is entitled to maintain suits to recover transportation charges due the Government. The Director General has always contended that the Agent appointed to execute the powers and duties of the President, in winding up the affairs of the Railroad Administration, as provided in Section 202 of the Transportation Act, is the proper party to bring such suits and he now contends that this suit was so brought. While adding to his title of Director General of Railroads the words "as Agent" may be surplusage and unnecessary, such added words do not take away any of his power, or change the character of the suit, or transform the Agent of the President to *wind up* the affairs of the Administration as directed in Section 202 of the Act, into the Agent appointed by the President under Section 206 of the Act for the purpose of *being sued*. The Agent under said Section 206 is not the Agent *of the President*, but he is the

Agent to be *sued* provided for by the Act, *to be appointed* by the President, and has no power in respect to *winding up* the affairs of the Railroad Administration further than to act as defendant in the litigation brought against the Government on account of matters arising out of the Federal control of railroads.

We do not understand petitioner to contend that the Director General of Railroads is not the proper plaintiff in a suit to collect charges accruing in the operation of railroads during Federal control. It has been the universal practice to so bring such suits, and while in the beginning the contention was frequently made that such suits could not be maintained in the name of the Director General of Railroads as plaintiff, the courts have universally held that such contention is untenable. Among the few cases so holding, which have been reported, are the following:

*Hines, Director General*, v. *Struthers Furnace Co.*, 271 Fed. 792, District Court Northern District of Ohio;

*Clemens et al.* v. *Payne, Director General*, 105 S. E. 623, Ga. Appeals;

*Davis, Director General*, v. *Carney and McColgan*, 240 S. W. 883, 884, Springfield Court of Appeals, Missouri;

*Philadelphia & Reading Railway Co. et al.* v. *Laurel Coal Mining Co.*, 276 Federal 1019–1020, District Court Eastern District Pennsylvania;

*The Firestone Rubber Co.* v. *James C. Davis, Director General, etc.*, decided January 7, 1924, and not yet reported, but copy attached in Appendix hereto.

In the case of *Davis, Director General,* v. *Carney et al.*, 240 S. W. 883, 884, after discussing the *Struthers Furnace Co. case* and the *Clemens case, supra,* the Court said:

> The two cases mentioned are the only ones we have been able to find ruling directly on the question in hand. We agree with the holding in those cases. Section 202 of the Transportation Act of 1920 (41 Stat. 456), Federal Statutes Annotated 1920, Supplement, page 74, provides that the President shall, as soon as practicable after the termination of Federal control, settle, liquidate, and wind up all matters and all questions and disputes of whatsoever nature arising out of or incident to Federal control. By Section 211 the President is authorized to perform the duties mentioned in Section 202, through such agency or agencies as he may determine. The Director General and plaintiff in the present case is the agency designated by the President to perform the duties mentioned in Section 202. If such agent can not sue, then he can not "adjust, settle, liquidate, and wind up all matters and all questions and disputes of whatsoever nature arising out of or incident to Federal control." It is our conclusion that the Director General is the proper party plaintiff in the case at bar.

Petitioner relies on the case of *Philadelphia & Reading Railroad Co. et al.* v. *Laurel Coal Mining Co., supra,* as announcing a contrary conclusion. In adopting such view petitioner is in error as such case expressly adheres to the doctrine of the *Struthers*

*Furnace Co. case.* In the opinion on page 1020 of the report the court uses the following language:

> Upon a claim accruing to the United States, the Director General, appointed pursuant to Section 11 of the Transportation Act of February 28, 1920 (41 Stat. 469), is under the practice followed and universally approved by the courts under Federal Control Act of 1918 the proper party plaintiff as is clearly demonstrated in the opinion of Judge Westenhaver, of the Northern District of Ohio, in the case of *Hines* v. *Struthers Furnace Co.* (D. C.), 271 Fed. 792, and without further discussion or comment I concur in Judge Westenhaver's ruling. The carrier, having no remedial interest, is improperly joined.

This opinion was rendered in sustaining a demurrer for misjoinder of plaintiffs. The action was by the "Philadelphia & Reading Railway Co. and John Barton Payne, Director General and Agent of the P. & R. Railway Co., vs. the Laurel Coal Mining Co." The Court held that there was a misjoinder, the carrier company having no remedial interest. In the opinion the court also called attention to the fact that there was no recital in the statement of claim that John Barton Payne was when suit was brought, the duly appointed Director General of Railroads; nor did the claim state in what respect he sues as Agent for the Philadelphia & Reading Railway Company, so that the theory upon which he was designated as Agent of the carrier, in the caption, did not appear. Of course, the Director General would not, by virtue of occupying such position, be the Agent of the Philadelphia & Reading Railway Company,

and if such agency existed in that case the fact should have been shown in the statement of claim. There was nothing in the statement of claim to indicate that the Director General was suing as such. In the case at bar, as has already been pointed out, the complaint contained allegations showing the appointment of the Respondent herein as Director General of Railroads and as the Agent to wind up the affairs of the Railroad Administration and showing clearly that respondent was suing as the Agent of the President appointed under Section 211, Transportation Act 1920, and as the agency selected by the President for performance of the duties imposed by Section 202 of the Transportation Act. *The Laurel Mining Company case*, therefore, does not aid Petitioner.

We conclude, therefore, that the statute of limitations in question is not applicable to suits brought for the recovery of charges due the Government on account of the operation of the railroads during Federal control, and that this suit was properly brought by the respondent as Director General of Railroads and Agent of the President for the winding up of the affairs of the Railroad Administration. The judgment of the Circuit Court of Appeals was, we believe, correct, and we respectfully ask that same be affirmed.

Respectfully submitted.

GEORGE B. PUGH,
*Little Rock, Ark.*,
A. A. MCLAUGHLIN,
*Washington, D. C.*,
*Attorneys for Respondent.*

S. Bugbee
Harrison
Little Rock,
Ark.

## APPENDIX.

IN THE COURT OF APPEALS, NINTH JUDICIAL DISTRICT.

STATE OF OHIO,
*Summit County, ss:*

THE FIRESTONE TIRE & RUBBER CO., plaintiff in error,
*v.*
JAMES C. DAVIS, DIRECTOR GENERAL OF Railroads, operating the Pennsylvania Railroad Co., defendant in error.
} No. 866.

Opinion. Argued December 3, 1923. Decided January 7, 1924.

ERROR TO THE COURT OF COMMON PLEAS.

Chalmers M. Hamill, for plaintiff in error; Paul C. Weick, and Waters, Andress, Southworth, Wise & Maxon, for defendant in error.

PARDEE, J. The defendant in error filed his amended petition in the Court of Common Pleas of said county, asking for a judgment against the plaintiff in error for freight charges resulting from a shipment of freight upon the Pennsylvania Railroad Co. by the plaintiff in error on the 7th day of October, 1919, during the time that Walker D. Hines was Director General of Railroads, and at which time said railroad was under Federal control.

To the petition the plaintiff in error interposed a demurrer, which was overruled by the trial court,

and the plaintiff in error not desiring to plead further, a judgment was entered in favor of said defendant in error for the amount asked in said petition. The plaintiff in error is here asking a reversal of said judgment upon four grounds, to wit: First, that the defendant in error did not have legal capacity to sue; second, that there was a defect of parties plaintiff in the court below; third, that the action was not brought within the time limited for the commencement of such actions; and fourth, that the amended petition did not state facts which show a cause of action.

The first two grounds were not seriously urged by the plaintiff in error in oral argument, as it was conceded that similar questions had been disposed of adversely to the claims of the plaintiff in error by the District Court of the United States for the Northern District of Ohio, in the case of *Hines* v. *Struthers*, 271 Fed. 792, and by the case of *Philadelphia & Reading R. R. Co. et al.* v. *Laurel Coal Mining Co.*, 276 Fed. 1019, in which case the opinion of Judge Westenhaver in the case of *Hines* v. *Struthers, supra*, was followed and approved, and also in the case of *Davis, Director-General of Railroads*, v. *E. I. DuPont de Nemours & Co.*, 287 Fed. 523.

The two remaining points, to wit, that the action was not brought within the time limited for the commencement of such actions and did not state facts which show a cause of action, will be considered together.

The plaintiff in error claims that by Section 424 of the Transportation Act, passed by Congress and approved in 1920, which reads as follows:

> All actions at law by carriers subject to this act for recovery of their charges, or any

> part thereof, shall be begun within three years from the time the cause of action accrued, and not later,

not only is the remedy barred but the cause of action sought to be enforced in this case is destroyed, because suit was not brought within the time specified.

In the case of *Davis* v. *Du Pont de Nemours & Co., supra*, the United States Court of Appeals for the Eighth Circuit expressly held that the above section was not a statute of limitations applicable to suits of this character, started by the Director General of railroads, and of course we will follow that decision.

In that case, however, the question as to whether the liability upon which suit was brought was destroyed by the passage of said amendment was not noticed or discussed. The plaintiff in error claims that the right of the defendant in error to collect freight charges from the plaintiff in error arose out of, was created by, and was wholly dependent upon the Interstate Commerce Act, and that the limitation as to time was restriction qualifying the right of action itself and not merely a limitation of time upon the remedy, so that the time having expired before suit was brought, the cause of action itself was also destroyed by the expiration of said time, and that the petition fails, therefore, to state a cause of action.

Assuming that this claim of the plaintiff in error (as to the cause of action being destroyed) is correct, which we doubt, we are of the opinion that the reasons assigned by the court in the case of *Davis* v. *Du Pont de Nemours & Co., supra*, which are applicable to the amendment as a statute of limitations,

would likewise apply to the statute and with equal force, whether it was one which destroyed the cause of action itself, or operated as a restriction qualifying the right of action, unless suit was brought within time.

We have very carefully examined the extended briefs which have been filed by the parties in this case, and we are unanimously of the opinion that the judgment of the trial court ought to be and it is hereby affirmed.

FUNK, P. J., and WASHBURN, J., concur in judgment.

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IN THE

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, A. D. 1923.**

## No. 517.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT, RESPONDENT,

*vs.*

E. I. DU PONT DE NEMOURS & COMPANY, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

No. 517.

E. I. DU PONT DE NEMOURS & COMPANY

*vs.*

JAMES C. DAVIS, *Director General of Railroads, as Agent.*

WASHINGTON, D. C., *March* 12, 1920.

Mr. GEO. B. PUGH,
*Attorney, United States Railroad Administration.*
Mr. A. A. MCLAUGHLIN,
*General Solicitor United States Railroad Administration,*
*Washington, D. C.*

GENTLEMEN:

I hereby direct your attention to certain additional authorities which counsel expects to use in the oral argument of this case, but which do not appear in the original brief.

## Issue II.

Point 1. *Director General vs. Kastenbaum*, — U. S., —; 68 L. Ed., 84 (11/12/23).

Section 16, Interstate Commerce Act, retrospective.

Point 2. *Meeker vs. Lehigh Valley Railroad Co.*, 236 U. S., 412-424.

Section 16 (3) retrospective.

*Lilly Co. vs. Oregon Short Line R. R. Co.*, 85 I. C. C., 644.

Section 16 (3) retrospective.

*Du Pont vs. V. G. H. & S. A.*, 87 I. C. C., 189.

Construed retrospectively Section 16 (3) gives the Director General at least 10 months to sue for charges and such time is reasonable.

*Lamb vs. Powder River Live Stock Co.*, 132 Fed., 434; 67 L. R. A., 558, 563.

Point 5½. Director General's claims for charges not Governmental claims, as shown by the cases permitting assignment thereof before allowance.

*West Cache Sugar Co. vs. Director General*, 87 I. C. C., 368 (unreasonable rates).

*Paradise Land & Live Stock Co. vs. Davis*, 60 Utah, 189; 209 Pac., 145 (damage due to unreasonable delay).

*Parrington vs. Davis*, 285 Fed., 741 (overcharges in violation of Sec. 6, I. C. Act).

Point 7. *Finance Docket No.* 1600, 66 I. C. C., 765-773.
Apply State statute limitations to suits for charges.
Point 8. *C. & N. W. vs. Ziebarth*, 245 Fed., 334.
*Yazoo & Miss. Valley Ry. Co. vs. Zemmay*, 238 Fed., 789.

In Arkansas suits on implied contracts such as liability for demurrage charges (see *Hines vs. W. F. Richardson, Jr.*, 290 Fed., 162) are barred three years after the cause of action accrued.

*Crawford & Moses Digest of the Statutes of Arkansas* (1921), chap. 111, sec. 6950, pp. 1823.

*C. R. I. & P. Ry. vs. Sena Lbr. Co.*, 99 Ark., 105; 137 S. W., 562.

Federal courts which hold that Section 16(3) of the Interstate Commerce Act does not apply to suits for demurrage charges (point not raised or discussed) accruing during Federal control apply the appropriate State statute of limitations.

*Hines vs. W. F. Richardson, Jr.*, 290 Fed., 162 (5/22/23).

Will you kindly furnish me with a list of the additional authorities Mr. Pugh spoke of using?

Yours very truly,

CLIFFORD H. BROWDER,
C. A. CUNNINGHAM,
*Attorneys for the Petitioner.*

No. 517

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1923.

JAMES C. DAVIS, Director General of Railroads, as Agent,
Respondent,

vs.

E. I. DUPONT DE NEMOURS & COMPANY,
Petitioner.

## MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE*.

LUTHER M. WALTER,
Attorney for National Industrial Traffic League.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1923.

No.————

JAMES C. DAVIS, Director General of Railroads, as Agent,
Respondent,

vs.

E. I. DUPONT DE NEMOURS & COMPANY,
Petitioner.

## MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE*.

Now comes Luther M. Walter, of Chicago, Illinois, attorney and counsel for The National Industrial Traffic League, and presents this, his motion for leave to appear in the above-entitled case as *amicus curiae* and to make suggestions and argument as such in support of the petition for a writ of certiorari filed by counsel for E. I. Dupont de Nemours & Company, petitioner, and in support of said motion shows as follows:

The National Industrial Traffic League is an organization of some 300,000 shippers of freight in interstate commerce, located throughout the various states of the United States. Charles Rippin, of St. Louis, is president, and Joseph H. Beek, of Chicago, Ill., is executive-secretary, and Luther M. Walter is attorney and counsel for said organization.

During the period of Federal Control the members of said organization shipped many hundred thousand cars of freight and paid the charges thereon, as demanded by

the Director General of Railroads, or his agents. More than three years have elapsed since the termination of Federal Control. Members of said organization are being presented with bills for undercharges on shipments of freight moving during the period of Federal control; the amounts involved are small and are not sufficient to warrant the expense of a defense in each separate case. The aggregate of bills for undercharges which have been so presented but which have not been made the subject of suit, runs into many thousands of dollars. If the decision of the District Court in the present case holding that the Director General of Railroads, as agent, is subject to the three-year Statute of Limitations provided in paragraph (3) of Section 16 of the Interstate Commerce Act, is a correct interpretation of law, then all such suits for undercharges are barred and the shippers of the United States will be relieved from the vexation, expense and necessity of defending suits for undercharges.

The members of The National Industrial Traffic League are vitally interested in the principle of law involved in this case. On behalf of the membership of The National Industrial Traffic League permission is sought to appear in said case as *amicus curiae* and to present the attached suggestions and argument as such in support of the petition for a writ of certiorari filed by counsel for E. I. Dupont de Nemours & Company, petitioner.

WHEREFORE, prayer is made that this Honorable Court will enter an order permitting Luther M. Walter to appear as *amicus curiae* in the above-entitled proceeding for the purposes stated above.

LUTHER M. WALTER.

## SUGGESTIONS AND ARGUMENT AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Paragraph (3) of Section 16 of the Interstate Commerce Act was added to the Act by Section 424 of the Transportation Act, 1920 (41 Stat. L., 493), and provides as follows:

> "All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after."

More than three years have elapsed since the termination of Federal control. If "the Director General of Railroads, as Agent" is subject to the statute above quoted, no such action can now be brought in any court for the recovery of undercharges accruing during the period of Federal control.

We desire briefly to call the court's attention to the development of Federal legislation during the period of Federal control, culminating in the passage of the Transportation Act, 41 Stat. L. 456.

By a provision in the Army Appropriation Act, approved August 29, 1916, the President was empowered in time of war, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same to the exclusion, as far as might be necessary, of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as might be needful or desirable. Under this statute, the President, by proclamation, on December 28, 1917, took over the control and operation of all common carriers by railroad within the continental bounds of the United States.

In the Federal Control Act of March 21, 1918, 40 Stat. L. 451, the Congress, recognizing that the President had in time of war under the above statute, taken over the possession, use, control and operation of certain railroads and systems of transportation, referred to in the Federal Control Act as "carriers," definitely provided for compensation to the owners of such systems of transportation and to a certain extent provided rules fixing liability and authority of the Director General during the period of Federal control. Among other things the President was authorized to execute any of the powers granted in the Federal Control Act and in the Army Appropriation Act of 1916, through such agencies as the President might determine.

Further, in Section 10, it was expressly provided:

> "That carriers while under Federal control, shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except insofar as may be inconsistent with the provisions of this Act, or any other Act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government."

By this provision of law Congress rounded out its plan to have the United States Government as a sovereign take control of the railroads of the country, to operate them primarily for war purposes, and to conduct transportation as a common carrier, so far as military exigencies permitted.

Dealing now with the purpose of Congress to have the United States engage as a common carrier of interstate commerce over the lines of railroad under Fed-

eral control, we find Congress definitely providing that railroads under Federal control should be subject to all laws and liabilities as common carriers, whether arising under state, federal or common law. The word "carriers" is by Section 1 of the Federal Control Act defined as "certain railroads and systems of transportation" which the president had in time of war taken over for possession, use, control and operation, denominated "federal control." As indicating the clear intention of the Congress that the possession, use and operation of these railroads under federal control should be subject to the ordinary rules of liability applied to the corporate carriers when not under Federal control, we find in the last sentence of Section 10 a definite provision that no defense in any action at law or suit in equity "shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal government." By this provision, Congress definitely and specifically waived any immunity or right as a sovereign, and prohibited any defense by the Director General of Railroads based upon any contention that he was an agency of the United States Government. The law applicable upon the corporate carrier in private operation, was intended to operate upon the Director General. The limitation upon liability of the corporate carrier defined the liability of the director general. The right of the corporate carrier became the right of the Director General.

The provision in Section 10 that no mesne or final process shall be levied against any property under Federal control was designed simply to protect the use and enjoyment of the property of the carriers to the extent that the president desired to use the same. This limitation upon the right of a litigant to have process against property in the possession of the Director General, is

further evidence of the intention of the Congress in all other respects to have the Director General in the same position as to rights and liabilities that the corporate carriers occupied prior to Federal control.

This section of the law has been construed by this court in *Missouri Pacific Railroad Co.* v. *Ault*, 256 U. S. 554, 65 L. Ed. 1087, and that construction confirms in every respect the contention which we are making here, viz.: that the Director General in the operation of railroads during the period of Federal control, was subject to all of the applicable statutes, both state and federal, excepting only penalties levied by state statutes. The Circuit Court of Appeals, in its opinion of March 5, 1923, cites the *Ault* case only as an authority for the proposition that in the control and operation of the railways during Federal control the Government was acting in its capacity as sovereign. We think that the language of Mr. Justice Brandeis in the discussion of the purpose of Section 10, is most pertinent, and, indeed, conclusive, when he said:

> "The plain purpose of the above provision was to preserve to the general public the rights and remedies against common carriers which it enjoyed at the time the railroads were taken over by the president, except insofar as such rights or remedies might interfere with the needs of Federal operation. The provision applies equally to cases where suits against the carrier companies were pending in the courts on December 28, 1917, to cases where the cause of action arose before that date and the suit against the company was filed after it; and to cases where both cause of action and suit had arisen or might arise during Federal operation. The government was to operate the carriers, but the usual immunity of the sovereign from legal liability was not to prevent the enforcement of liabilities ordinarily incident to the operation of carriers. The situation was analogous to that which would exist if there were a general receivership of each transportation system.

> Operation was to be continued as theretofore, with the old personnel, subject to change by executive order. The courts were to go on entertaining suits and entering judgments under existing law, but the property in the hands of the president for war purposes was not to be disturbed. With that exception, the substantial legal rights of persons having dealings with the carriers were not to be affected by the change of control.
>
> This purpose of Congress accomplished by providing that 'carriers while under Federal control' should remain subject to all then existing laws and liabilities, and that they might sue and be sued as theretofore. Here the term 'carriers' was used as it is understood in common speech—meaning the transportation systems, as distinguished from the corporations owning or operating them."

With these general observations as to the purpose of Congress in attaching the ordinary carrier liabilities to the Director General during Federal control thus clearly stated, Justice Brandeis proceeds to consider the specific question involved in the *Ault* case, as to whether the Director General, as the carrier, was liable to an employee for unpaid wages and in addition liable for the penalty provided by the Arkansas statute, viz., continuance of the regular wage from date of discharge until unpaid wages had been fully paid. On this point Mr. Justice Brandeis said:

> "The contention that the Director General, being the carrier, is liable for the penalty imposed by the Arkansas statute is rested specifically upon the clause in Sec. 10, to the effect that the carriers 'shall be subject to all laws and liabilities as common carriers, whether arising under state or federal laws or at common law,' and the provision in Sec. 15, that the 'lawful police regulations of the several states' shall continue unimpaired. By these provisions the United States submitted itself to the various laws, state and federal, which prescribed how the duty of a common carrier by railroad should be performed and what should be the remedy for

failure to perform. By these laws the validity and extent of claims against the United States, arising out of the operation of the railroad, were to be determined. But there is nothing either in the purpose or the letter of these clauses to indicate that Congress intended to authorize suit against the Government for a penalty, if it should fail to perform the legal obligations imposed. The Government undertook, as carrier, to observe all existing laws, it undertook to compensate any person injured through a departure by its agents or servants from their duty under such law; but it did not undertake to punish itself for any departure by the imposition upon itself of fines and penalties, or to permit any other sovereignty to punish it."

Section 10 of the Federal Control Act is thus interpreted as subjecting common carrier operation by the Director General to the ordinary rules applicable to carriers provided by statute of the United States, by statute of the various states, or by the common law. This provision of the Federal Control Act not having been amended or repealed is still in full force and effect.

During Federal control, and on February 28, 1920 (Federal control ending at midnight February 29, 1920), Congress definitely provided by statute (41 Stat. L., 456) that carriers in suits for undercharges were subject to a statutory limitation of three years in which to bring actions for undercharges, and that statute was a law during the remainder of Federal control. To the extent that the Director General continued any of his functions after Federal control, that law is binding upon him, as well as upon corporate carriers.

By Section 10 of the Federal Control Act Congress clearly provided that whatever the law was at any time during Federal control, governing either rights or liabilities, that law applied to the Director General; when Congress changed the provision as to limitation of suits for undercharges so as to apply a national uniform three-

year period instead of the varying limitations provided in the various states or by common law, it established a new rule which, under Section 10 applied to the Director General.

With the language of the statute, as we see it, specific in its application to suits by the Director General, nothing more need be said further than to point out that even if there were a lingering doubt as to the specific intent of the Congress, that doubt is removed by a consideration of the purposes of the Congress in providing for a three-year period as a statute of limitations upon suits for undercharges.

It is pertinent to observe the nature and object of limitations upon actions. The essential attribute of a statute of limitations is that it accord and limit a reasonable time within which a suit may be brought upon causes of action which it affects. Statutes of this character are founded in part, at least, on the general experience of mankind that claims which are valid are not usually allowed to remain uncollected, and that the lapse of years before attempting to enforce a demand creates a presumption against its original validity, or that the claim has ceased to exist. The basic principle most generally relied upon by Congress and local legislative authority is that statutes of limitation are statutes of repose. The statute is for the benefit and repose of individuals, not to secure general objects of policy and morals. In accordance with these definite objects and purposes, generally recognized in statutes of limitation, Congress specifically applied the three-year rule to the carriers. The reason of the law applies alike to the Director General and the corporate carrier, for it cannot be said that there is any greater reason to limit the carrier corporation to three years in suing for undercharges than there is so to limit the Director General.

Moreover, we find a specific direction in Section 202 of the Transportation Act, 1920, which deals with the settlement of matters arising out of Federal control, requiring the president "*as soon as practicable after the termination of Federal control*" to adjust, settle, liquidate, and wind up all matters, of whatsoever nature, arising out of or incident to Federal control.

For the reasons above set forth, we think that the petition for a writ of certiorari should be granted.

Respectfully submitted,

LUTHER M. WALTER,
*Attorney for National Industrial Traffic League.*

2003 Chicago Temple Building,
Chicago, Illinois.

# E. I. DUPONT DE NEMOURS & COMPANY *v.* DAVIS, DIRECTOR GENERAL OF RAILROADS, AGENT.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 517. Argued March 14, 1924.—Decided April 7, 1924.

1. In a complaint showing by apt allegation that the plaintiff sues as the Director General of Railroads continued in that office by the President under §§ 202 and 211 of the Transportation Act, a description of him "as agent", appointed under § 206 of the act, may be rejected as surplusage. P. 459.
2. Paragraph (3), added by the Transportation Act to § 16 of the Interstate Commerce Act and providing: "All actions at law by carriers subject to this Act for recovery of their charges . . . shall be begun within three years from the time the cause of action accrues, and not after", does not apply to an action by the Director General of Railroads to recover demurrage charges accrued to the United States during the period of federal control of railroads. *Id.*

287 Fed. 522, affirmed.

CERTIORARI to a judgment of the Circuit Court of Appeals which reversed a judgment of the District Court sustaining a demurrer to the complaint in an action by the Director General of Railroads to recover demurrage charges.

*Mr. Clifford H. Browder* and *Mr. C. A. Cunningham*, with whom *Mr. Z. B. Harrison* was on the brief, for petitioner.

It was within the power of this Court to grant the writ of certiorari, though the judgment of the Circuit Court of Appeals did not dispose of the case, it being one where original jurisdiction was based only on diversity of citizenship. Jud. Code, §§ 128, 240; *American Constr. Co.* v. *Jacksonville, etc., Ry. Co.*, 148 U. S. 372; *Forsyth* v. *Hammond*, 166 U. S. 506; *Denver* v. *New York Trust Co.*, 229 U. S. 123; *The Three Friends*, 166 U. S. 1; *The Conqueror*, 166 U. S. 110; *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U. S. 251.

The Circuit Court of Appeals erred in determining that § 16(3) of the Commerce Act, as amended by the Transportation Act, is not applicable to suits by the Director General of Railroads for charges accruing during federal control.

It was the policy of the Congress and the President to operate federally controlled roads without the usual immunity of the sovereign from legal liability. 39 Stat. 619; President's Proclamations, December 26, 1917, and April 11, 1918; Federal Control Act, §§ 8–10; *Director General* v. *Viscose Co.*, 254 U. S. 498; *Missouri Pac. R. R. Co.* v. *Ault*, 256 U. S. 554.

Section 16(3) of the Commerce Act is retrospective. *Sohn* v. *Waterson*, 17 Wall. 596; *United States* v. *Director General*, 80 I. C. C. 143; *Phillips Co.* v. *Grand Trunk Ry. Co.*, 236 U. S. 662; *Louisville Cement Co.* v. *Interstate Commerce Comm.*, 246 U. S. 638; *Kansas City So. Ry. Co.* v. *Wolf*, 261 U. S. 133.

The Director General is bound by the limitation in § 16(3) of the act. *United States* v. *Director General*, 80 I. C. C. 143; *Davis* v. *Dupont*, 287 Fed. 522; Transportation Act, § 206; *Northern Pac. Ry. Co.* v. *North*

*Dakota*, 250 U. S. 135; *North Carolina R. R. Co.* v. *Lee*, 260 U. S. 16; *In re Tidewater Coal Exchange*, 280 Fed. 648; *In re Hibner Oil Co.*, 264 Fed. 667; *Davis* v. *Pullen*, 277 Fed. 650.

The Government stood in the shoes of the carriers during federal control and was included in the word "carriers" in § 16(3). Federal Control Act, § 10; *Missouri Pac. R. R. Co.* v. *Ault*, 256 U. S. 554.

A receiver is a carrier under the Commerce Act. *United States* v. *Ramsey*, 197 Fed. 144; *United States* v. *Nixon*, 235 U. S. 231; *Rutherford* v. *Union Pac. Ry. Co.*, 254 Fed. 880; *Evans* v. *Union Pacific Ry. Co.*, 6 I. C. C. 520.

The exclusion of the Director General from certain obligations in the Commerce Act shows that he was subjected to all other rights and duties in said act, including the restrictions in § 16(3). *Director General* v. *Viscose Co.*, 254 U. S. 498.

Section 16(3) should be construed to avoid discrimination and absurdity. *United States* v. *Southern Pac. R. R. Co.*, 230 Fed. 270.

The Transportation Act established no new limitation in Arkansas. *Cattle Raisers Assn.* v. *Chicago, etc. Ry. Co.*, 10 I. C. C. 83; *Chicago, etc. Ry. Co.* v. *Lena Lumber Co.*, 99 Ark. 105.

The decision of the Circuit Court of Appeals that Davis, Director General, in his capacity as federal agent, was the proper party plaintiff, was based on an erroneous construction of the law. Transportation Act, §§ 202, 206, 211; *Director General* v. *Struthers Furnace Co.*, 271 Fed. 792; *Phila. & Read. Ry. Co.* v. *Laurel Coal Co.*, 276 Fed. 1019; 25 R. C. L. 981, par. 229.

*Mr. George B. Pugh* and *Mr. A. A. McLaughlin*, with whom *Mr. Thos. S. Buzbee* and *Mr. H. T. Harrison* were on the brief, for respondent.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This is an action to recover demurrage charges accrued at Little Rock, Arkansas, during May, June and July, 1918, on certain shipments of cotton linters. The defendant, petitioner here, demurred to the complaint on the grounds: (a) That the cause of action was barred by the statute of limitations; and (b) That plaintiff was without authority to bring the action. The District Court sustained the demurrer but was reversed by the Court of Appeals. 287 Fed. 522.

There is nothing in the second point and we dispose of it at once. The contention is that the authority to maintain the action is vested in the Director General of Railroads, originally designated under the Federal Control Act and continued by the President under §§ 202 and 211 of Transportation Act, 1920, c. 91, 41 Stat. 459, 469; and not in Davis, as Agent, appointed under § 206 of the latter act. Apt allegations, however, are found in the body of the complaint to bring the plaintiff, Davis, within the provisions of §§ 202 and 211. At most the words " as agent " are surplusage; and it is impossible that defendant could have been prejudiced by their use. Act of February 26, 1919, c. 48, 40 Stat. 1181.

The action was brought more than three years after the cause of action accrued. The statute relied upon as a bar is § 424, Transportation Act, 1920, 41 Stat. 491–492, being a new paragraph added to § 16 of the Interstate Commerce Act by way of amendment. The pertinent words are: "(3) All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after." It is insisted that the United States—or the Director General, representing the United States—is included in the provision as a carrier

subject to the act. Our opinion is otherwise. The act consists of five titles. Title II is devoted exclusively to the subject of the termination of federal control, which it is declared shall take place at 12.01 a. m., March 1, 1920,—the act becoming effective February 28, 1920. Title III deals only with the subject of disputes between carriers and their employees and subordinate officials, creates Railroad Boards of Labor Adjustment and a Railroad Labor Board, and vests them with appropriate powers. Title IV consists entirely of amendments to the Interstate Commerce Act and includes § 424, here relied upon. While these three titles are concerned with related subjects, they are entirely distinct one from another. Title II, which is complete in itself, among other things, provides, § 200, that after the termination of federal control, the President shall have no power to use or operate the railroads or systems of transportation, or to control or supervise the carriers or their business affairs; and directs him, § 202, to adjust, settle, liquidate and wind up all matters and all questions and disputes, of whatsoever nature, arising out of or incident to federal control *as soon as practicable* after the termination thereof. The only provision prescribing a period of limitation definitely in respect of such matters, is found in § 206 (a); and it relates only to actions, suits and proceedings brought *against* an agent to be designated by the President for that purpose, and fixes as the period of limitation that now prescribed by state or federal statutes, but not later than two years from the passage of the act. In this Title, thus specifically devoted to the subject of winding up matters arising out of federal control, nothing is to be found which suggests any limitation of time within which actions, suits or proceedings shall be brought to enforce liabilities arising out of federal control, in favor of the United States.

Turning now to Title IV, amending the Interstate Commerce Act, the declaration at the beginning is that its

provisions "shall apply to common carriers" engaged in various enumerated kinds of transportation. § 400, p. 474. There is to be found in this Title no provision specifically relating to the period of federal control or dealing with the question of liability to or of the Government in respect of any matter arising during such control. If Congress had intended to fix a period of limitation applicable to actions, suits or proceedings brought in behalf of the United States in respect of liabilities arising out of federal control, we should naturally expect to find it in Title II, where such matters are exclusively dealt with; and not in Title IV, which deals with common carriers entirely apart from such control. It may not have been unusual in common speech, to describe the Director General as a carrier while he was operating the railroads; but it is clear that he was not intended to be included by that term as it is generally employed in acts of Congress. The Federal Control Act, c. 25, 40 Stat. 451, repeatedly recognizes a distinction between the President—including, of course, the Director General—and the carriers. The first section itself limits the meaning of the word "carriers" to railroads and systems of transportation, which as carriers had been taken over by the President. Accurately speaking, the Director General was not a carrier, but an operator of carriers. The distinction to which we have referred, constantly appears in the provisions of the act, as, for example: "The President may nevertheless pay to any carrier while under Federal control an annual amount," etc. § 2; "On the application of the President or of any carrier," etc., § 3; "Carriers while under Federal control shall be subject to all laws and liabilities as common carriers," etc., § 10; "actions at law or suits in equity may be brought by and against such carriers," etc., § 10; "moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States," § 12.

In taking over and operating the railroad systems of the country the United States did so in its sovereign capacity, as a war measure, " under a right in the nature of eminent domain," *North Carolina R. R. Co.* v. *Lee,* 260 U. S. 16; *Missouri Pacific R. R. Co.* v. *Ault,* 256 U. S. 554; *Northern Pacific Ry. Co.* v. *North Dakota,* 250 U. S. 135; *In re Tidewater Coal Exchange,* 280 Fed. 648, 649; and it may not be held to have waived any sovereign right or privilege unless plainly so provided. Moneys and other property derived from the operation of the carriers during federal control, as we have seen, are the property of the United States. § 12, 40 Stat. 457. An action by the Director General to recover upon a liability arising out of such control is an action on behalf of the United States in its governmental capacity, (*Chesapeake & Delaware Canal Co.* v. *United States,* 250 U. S. 123, 126; *In re Tidewater Coal Exchange, supra*) and, therefore, is subject to no time limitation, in the absence of congressional enactment clearly imposing it. *United States* v. *Nashville, C. & St. L. Ry. Co.,* 118 U. S. 120, 125; *United States* v. *Whited & Wheless, Ltd.,* 246 U. S. 552, 561. Statutes of limitation sought to be applied to bar rights of the Government, must receive a strict construction in favor of the Government. *United States* v. *Whited & Wheless, Ltd., supra.*

The foregoing analysis of the acts of Congress viewed in the light of the principles just stated, demonstrates that § 424 has no application to an action of the kind here involved; but applies to common carriers apart from their operation under federal control, and we so hold.

*Affirmed.*